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37

# **Institutional History of Virginia**

**In the Seventeenth Century**

**An Inquiry into the Religious, Moral, Educational, Legal, Military, and Political  
Condition of the People**

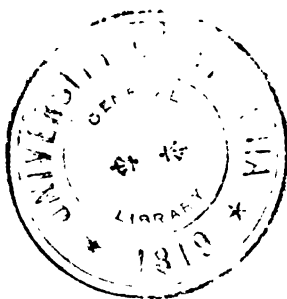
**Based on Original and Contemporaneous Records**

By

**Philip Alexander Bruce, LL.D.**

Author of "Economic History of Virginia in the Seventeenth Century,"  
"Social Life of Virginia in the Seventeenth Century," "The  
Plantation Negro as a Freeman," "Short History of  
the United States," "Rise of the New  
South," "Life of General Robert  
E. Lee," etc.

**Two Volumes  
Volume I**



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**THE BEST OF WIVES**



## PREFACE

HAVING in my *Economic and Social Histories of Virginia in the Seventeenth Century*—the one published in 1896, the other in 1907—described in detail two sides of Colonial life in that age, it only remained to issue an *Institutional History* of the same period in order to present a complete picture of all the conditions prevailing in Virginia previous to 1700. In the preparation of the present volumes, which close the study, I enjoyed the advantage of a personal examination of all the original documents bearing on the subject, preserved, not only in this country, but also in the great English depositories, such as the Public Record Office in London, Fulham and Lambeth Palaces and the like.

PHILIP ALEXANDER BRUCE.

NORFOLK, VA.





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**Part I**  
**Religion and Morals**



## CHAPTER I

### Early Religious Spirit

**A**LTHOUGH the first settlement of Virginia had its principal motive in the practical commercial objects always so powerfully influencing the English mind, yet there is no reason to think that the laymen who set that memorable enterprise on foot, as well as the clergymen who encouraged it,<sup>1</sup> were not deeply sensible of the religious aspect of so great an action. The burning ambition of Columbus was to find a western waterway to the East, but, as is so well known, he never lost sight of the glory that would fall to his lot should he carry the Faith further than it had ever before gone. No such religious ardor as this colored the hopes of the intrepid adventurers who founded Jamestown; but back of all their thirst of gold and trade calculations, there existed a spirit that was eager to extend to the savage inhabitants of the new land all the blessings of the Christian Belief. In the royal instructions for the government of Virginia accompanying the letters of 1606, the President and Council were strictly enjoined to see to it that the "word and service

<sup>1</sup> There was one clergyman among the small number of persons obtaining the grant of the charter of 1606, whilst in the list of those receiving the charter of 1609, the names of one bishop and seven clergymen appear. Among those subscribing to the company's stock under the charter of 1612, were seven clergymen and one dean.

of God were preached, planted, and used" among the Indians residing within the limits of the Colony; and in the same remarkable document, an order was given to the English settlers to treat the heathen people in those parts "with unfailing kindness, and to draw them to the true service and knowledge of God" by all proper and available means.<sup>1</sup> One of the principal reasons assigned for the grant of the first Virginia charter was that the great enterprise which it authorized to be undertaken would enhance the glory of the Divine Majesty by "propagating the Christian religion to such people as yet live in darkness and miserable ignorance of the true knowledge and worship of God."<sup>2</sup> The *True and Sincere Declaration*, published in 1609, went so far as to say that the first object of the plantation was "to preach and baptize into the Christian religion, to recover out of the armes of the Devill, a number of poore and miserable soules wrapt up unto death in almost invincible ignorance."<sup>3</sup>

There were among the early settlers many persons who had a most vivid and fervid conception of the religious duty the English owed to the savage people found in possession of the country. "What a crown of glory," exclaimed John Rolfe, "shall be set upon their heads who shall faithfully labour herein!"<sup>4</sup> "What is more excellent, more precious, more glorious," exclaims Ralph Hamor, with even greater enthusiasm, "than to convert a heathen nation from worshipping the devill to the saving knowledge and

<sup>1</sup> Instructions for the Government of the North and South Virginia Colonies, 1606; see Brown's *Genesis of the United States*, vol. i., p. 67.

<sup>2</sup> See Virginia Charter of 1606.

<sup>3</sup> Brown's *Genesis of the United States*, vol. i., p. 339.

<sup>4</sup> Rolfe's *Relation of Virginia*, Va. Hist. Register, vol. i., No. iii.

true worship of God in Jesus Christ?" Robert Johnson, a leading member of the London Company, made an eloquent appeal to every English subject to take part "in this high and acceptable work tending to advance and spread the Kingdom of God and the knowledge of the Truth; so many millions of men and women, savage and blind, that never saw the true light before their eyes, to enlighten their minds and comfort their souls."<sup>1</sup> The same religious and philanthropic note was struck by the distinguished clergymen who delivered sermons for the advancement of the plantation.<sup>2</sup> But perhaps the noblest of all the men who, in these early times, were interested in the Indians' spiritual welfare was George Thorpe, justly described as a "worthy, pious, and religious gentleman"; he came out to Virginia to serve as the manager of the college projected for the conversion and education of Indian youths; but his only reward for his untiring zeal was to perish miserably by a blow of the tomahawk in the massacre of 1622, when so many fell in the same treacherous attack.

In 1619, the first General Assembly convening in Virginia, in order to lay a sure foundation for turning the Indian tribes to Christianity commanded the authorities of each town, city, borough, and plantation in the Colony to secure by peaceful means a certain number of Indian children with the view of bringing them up in "a religious and civil course of life." The most promising of these native youths were to be grounded in the rudiments of English learning

<sup>1</sup> These words are from *Nova Britannia* written by Johnson.

<sup>2</sup> For instance, the sermon of the Rev. Wm. Symonds, April 15, 1609; of Rev. Daniel Price, May 28, 1609; of Rev. Mr. Crashaw, Febr. 21, 1609; and of Rev. Richard Crackenthorpe, March 24, 1608.

in order to fit them to enter the college which it was proposed to set up; and when they had been graduated from this institution, they were expected to go out as missionaries among their Indian kindred.<sup>1</sup> The project of a school and college for the education of young Indians was one in which, not only the London Company, but also the King himself showed a deep interest; in 1620, James I gave orders that a letter should be dispatched to the Archbishops of Canterbury and York commanding them to send out, through the bishops of the different dioceses, an appeal to all the members of the Anglican Church to assist, by their contributions, in establishing these institutions, as well as in promoting other pious works in the Colony. It was stated in this letter that the Company had already begun to build churches and found schools for the savages' conversion and training, but as the expense was heavy, aid was needed. This appeal did not prove in vain, for fifteen hundred pounds sterling was collected.<sup>2</sup> In the course of the same year, fifty agricultural servants were transported to Virginia for the purpose of meeting, by the returns from their labor, the charge of educating thirty Indian children in "true religion and civility."<sup>3</sup>

Numerous instances of private gifts and bequests for the advancement of the same general object are recorded in the history of this early period. For example, in 1602, the elder Nicholas Ferrer left three hundred pounds sterling by will for the conversion of infidel

<sup>1</sup> Assembly Minutes, 1619, *Colonial Records of Virginia*, State Senate Doct., Extra, 1874.

<sup>2</sup> The King's letter will be found in Campbell's *History of Virginia*, p. 146.

<sup>3</sup> Abstracts of Proceedings of Va. Co. of London, vol. i., p. 67.

children; this sum was to be paid by his executors to Sir Edwin Sandys and John Ferrer, officers of the Company, as soon as ten Indian pupils had been enrolled in the projected college; but in the meanwhile, the interest derived from the fund was to be expended in compensating three citizens of Virginia who, on their own account, should undertake to bring up, each in his own house, a young Indian in the Christian religion.<sup>1</sup> A few years subsequent to Ferrer's bequest, Rev. George Ruggle left one hundred pounds sterling to be devoted to the same general purpose.<sup>2</sup>

During the early months following the first settlement,—the English not yet having had an opportunity of obtaining an insight into the natives' unalterable ferocity,—the opinion prevailed that their character might be softened by the occult influence of the English prayer book, though not one word in it was really intelligible to the aboriginal brain. In the course of 1608, a band of eighteen savages were captured, and, with the exception of one who was soon released, they were, for some time, brought every morning and evening to the divine service held at those hours in the church at Jamestown.<sup>3</sup> But the chronicler fails to record whether their hearts were touched. How different from the lovely Indian heroine, Pocahontas! "I was moved," exclaims Gov. Dale, with fervent admiration, "by her desire to be taught and instructed in the knowledge of God, her capableness of understanding, her aptness and willingness to receive any good impression, also the spiritual"; and his success in converting this beautiful "unregen-

<sup>1</sup> Abstracts of Proceedings of Va. Co. of London, vol. i., p. 55.

<sup>2</sup> *Ibid.* p. 108.

<sup>3</sup> *Works of Captain John Smith*, p. 36, Arber's edition.



erate to regeneration" afforded him extraordinary satisfaction.<sup>1</sup> There is hardly a more interesting or inspiring fact in the history of these early years than the solicitude shown by this stern English soldier (who pitilessly enforced discipline with the wheel, musket, and noose) for the Indian girl's conversion to the Christian Belief. "I caused her," he informs us, "to be carefully instructed in the Christian religion, who, after she had made some good progress therein, renounced publicly her Country's idolatry; openly confessed her Christian faith; and was, as she desired, baptized."

Pocahontas stood a person apart among the members of her own race; but it was not until the frightful massacre of 1622 took place that the colonists clearly perceived this to be so. The revulsion of feeling caused by that sanguinary event dissipated the kindness which was prepared to make so many sacrifices for christianizing and civilizing the Indian tribes. Rev. Jonas Stockton gave expression to the general opinion when he declared that it would be impossible to change the hearts of the savages "until their priests and ancients" were put to the sword.<sup>2</sup> This was the earliest utterance of the belief formulated by a later observation into the more precise saying: "the only good Indian is a dead Indian." The massacre of 1644, the final effort of the grim and treacherous Opechancanough to destroy the English population, smothered for a very long time what remained of the missionary spirit among the whites; after this, no active step seems to have been taken to spread the Christian religion among the surviving tribes, although the special

<sup>1</sup> *Works of Captain John Smith*, p. 512, Arber's edition.

<sup>2</sup> See Campbell's *History of Virginia*, p. 165.

orders given to each succeeding Governor inculcated the work of conversion as one of the most urgent of the executive duties. When, at the close of the century Nicholson was appointed to the highest office in the Colony, he was directed by the English authorities to recommend to the General Assembly the passage of laws which would ensure the education of the Indians and negroes in the Christian Faith. Nor did he fail to carry out an instruction so congenial to his own wishes. The House of Burgesses, however, when their attention was called to the subject by him, returned a discouraging reply: "The negroes born in this country," so its answer ran, "are generally baptized and brought up in the Christian religion, but for negroes imported hither, the gross bestiality and rudeness of their manners, the variety and strangeness of their languages, and the weakness and shallowness of their minds, render it in a manner impossible to make any progress in their conversion." On the other hand, the House pronounced the proposed conversion of the Indians to be more promising in the light of the recent endowment by the executors of that "pious and noble benefactor," Robert Boyle, of a department in William and Mary College for the special purpose of spreading Christianity among them.<sup>1</sup> Whatever religious zeal might have accomplished among them in the closing years of the century would, no matter how resolute and untiring that zeal was, have been certainly diminished by the steady decline in the size of the aboriginal population; by 1669, the number of bowmen residing in the vicinity of the English settlements had fallen off to seven hundred and twenty-five<sup>2</sup>; while the entire body of

<sup>1</sup> Minutes of Council, June 2, 1699, *B. T. Va.*, vol. lii.

<sup>2</sup> Henning's *Statutes*, vol. ii., p. 275.

Indian inhabitants residing within the Colony's boundaries probably did not exceed three thousand individuals.

The surviving records of the Seventeenth century contain numerous proofs of the strong religious feeling which shaped the opinions and influenced the conduct of the Virginians from the time of the earliest settlement of the country. The first adventurers, as we have seen, came over with many noble, but, as later events proved, extravagant plans for spreading the Christian doctrines among the Indian tribes. Apart from this lofty missionary spirit, which animated so many high-minded men among them, we find the whole body of these first pioneers showing on every proper occasion their loyalty to the religious observances familiar to them from childhood. Daily, the founders of Jamestown attended morning and evening prayers, and joined in singing a psalm<sup>1</sup>; on each recurring Sunday, two sermons were preached before them; and once every three months, they received the Holy Communion. "Surely God did most mercifully hear us," piously exclaims one of these early chroniclers.<sup>2</sup> The Colony's preservation from complete destruction in these years was again and again attributed by Captain Smith to the direct intervention of the Almighty, whose providence, however dark the hour, never failed them. Daily, during his adventurous and tempestuous voyage up the Chesapeake Bay, Smith read the morning and evening prayers to his companions; and together, under

<sup>1</sup> *Newes from Virginia, Works of Capt. John Smith*, p. 36, Arber's edition.

<sup>2</sup> *Works of Captain John Smith*, pp. 956-8, Arber's edition. After the death of Rev. Robert Hunt, a homily was delivered on Sunday until his successor arrived.

the open sky, and in the midst of those wild and hitherto unexplored waters, they sang a hymn.<sup>1</sup> De la Warr (who was described as being both a pious and a valiant man), on landing at Jamestown, fell on his knees, and, in the presence of the awed and reverent people, made a long and silent prayer; then rising to his feet, headed the procession, which moved slowly and solemnly to the church, where a sermon was heard. One of the first orders given by him was for the repair of this edifice. Daily, during his administration, prayers were read at ten o'clock in the morning and at four in the afternoon; on Sunday, two sermons were preached; and on Thursday, one. The Governor was accompanied to church by the entire body of gentlemen and officials, and was attended by a guard of fifty halberdiers dressed in red cloaks, the livery of the West family. His chair, placed in the choir, was lined with green velvet, whilst the cushion on which he knelt during prayers was made of the same rich stuff.<sup>2</sup>

On Sir Thomas Dale's arrival at Jamestown in May, 1611, he first repaired to the church, and there heard a sermon preached by Rev. Mr. Pooley. Rev. Alexander Whitaker eulogized him as a "religious and valiant man," and also as one "of a great knowledge of divinity, and of a good conscience in all his doings," however stern and exacting he may have appeared to be at times. During his administration, a sermon was delivered in the church every Sunday morning; and in the afternoon of the same day, there was also an examination there in the catechism; whilst every Saturday night, religious services were held in the governor's

<sup>1</sup> *Works of Capt. John Smith*, p. 118, Arber's edition.

<sup>2</sup> *Purchas*, vol. iv., p. 1754.

house under the direction of Whitaker, who, with four other citizens, chosen for their religious life, had charge of the affairs of the Church. The communion service was celebrated once every month; and once every year a day was set apart for a general fast.<sup>1</sup>

Dale writing to a friend, a clergyman in London, refers with pious humility to his own great work in laying a sure foundation for the Colony's prosperity; "what recompense or what reward for which," he said, "by whom or where, I know not where to expect but from Him in whose vineyard I labour, whose Church with greedy appetite I desire to erect."<sup>2</sup> Of all those terrible *Divine and Martial Laws*, which he thought necessary for the complete repression of every form of disorder and wrong doing, he enforced with most strictness the numerous provisions adopted to compel respect for religion and the different ecclesiastical ordinances. The duty was imposed upon every officer to see that "God was served"; and each was commanded to set the example to all persons under him by a regular attendance at morning and evening prayers. Whoever omitted going to church was punished for the first offence by the loss of his day's allowance; for the second, by a severe whipping; and for the third, by his condemnation to the galleys for a period of six months. Profanation of God's name by an unlawful oath was, for the second offence, to be punished with a bodkin's thrust through the tongue; and for the third, with death; and the penalty of death also was

<sup>1</sup> Letter of Whitaker to M. G., June 18, 1614, Hamor's *Discourse*. A sermon was required by the "Divine and Martial Lawes" to be delivered also on every Wednesday. By the same laws, the clergyman and his four assistants were directed "to find out the neglects of the people in their duties and service to God."

<sup>2</sup> See Dale's letter in Hamor's *Discourse*.

to be paid by whoever stole one of the sacred articles belonging to the church building.<sup>1</sup>

The colonists' religious punctuality in these early times is illustrated in the action of "one Fairfax," whose home was situated about a mile from Jamestown. It happened that, only a few days before, a settler residing not far from him had been treacherously killed by a band of Chickahominies. When Sunday arrived, Fairfax did not allow this fact to deter him from attending the services at Jamestown. His wife left their house and went along the path to meet him on his return, and while they were both thus absent the Indians, creeping in, slew their three young children and a boy; and also butchered a second youth who had stolen away from church while prayers were going on.<sup>2</sup>

Among the most important acts passed by the Assembly of 1619, the first to convene in the Colony, were those designed to advance the religious and moral welfare of the people. Perhaps, not the least remarkable of these laws was the one requiring all the clergymen residing in Virginia to come together at Jamestown at least once every three months, and after consulting with each other, to "determine whom it was fit to excommunicate"; but the names of such persons were to be submitted to the Governor before the act of excommunication could be legally promulgated.<sup>3</sup> A similar spirit is shown to have animated the highest authorities of the Colony in these early times by the numerous proclamations which they issued against

<sup>1</sup> See *Divine and Martial Lawes*, 1611, in Force's *Historical Tracts*.

<sup>2</sup> *Works of Capt. John Smith*, p. 558, Arber's edition.

<sup>3</sup> *Minutes of Assembly*, 1619, p. 27, *Colonial Records of Va.*, State Senate Doct., Extra, 1874.

they repented in time, appointed the twenty-seventh of August of that year a day of fasting; and all persons were warned to cease working, gambling, and drinking on that day, under the penalty of a heavy fine for disobedience.<sup>1</sup> When the Insurrection of 1676 came to an end, Bacon being dead, the fourth of May and the twenty-second of August were selected by those who had triumphed as days of general thanksgiving.<sup>2</sup> Twelve years afterwards, the House of Burgesses, deeply moved by the heavy mortality which at that time prevailed throughout Virginia, and publicly deploring this terrible condition as the result of the crying sins of the people, appealed to the Governor to appoint a day of fasting for the General Assembly alone, and a second day for a public fast in all parts of the Colony.<sup>3</sup>

In 1692, Governor Andros issued his proclamation for a day of thanksgiving to be celebrated at Jamestown, where the General Assembly was about to convene; and for a second day, of a later date, in which the entire Colony was to participate; at this time, Virginia was declared to have been "signally blessed by a gracious Providence"; and there was a universal desire for a public expression of the popular gratitude.<sup>4</sup>

<sup>1</sup> Hening's *Statutes*, vol. ii., p. 265.

<sup>2</sup> *Ibid.*, p. 399.

<sup>3</sup> Colonial Entry Book, 1682-95, p. 523.

<sup>4</sup> The Proclamation will be found in Henrico County Records, vol. 1688-97, p. 415, Va. St. Libr. It ran as follows:

"By his Excellency, A Proclamation.

"Almighty God of his infinite Goodness and Mercy has in many ways been graciously pleased to bestow his great blessings on this, their Majestys' Colony and Dominion of Virginia, And a General Assembly being called and soon to sit to consider and advise, of such things as may be for the glory of God, the Honr. of their Majestys and the Peace and Welfare of this Colony and the in-

In the course of the same year, Andros directed that the twenty-fifth of September, which happened to fall on Sunday, should be observed as a day of public thanksgiving on account of the great victory the English fleet had recently won over the French<sup>1</sup>; whilst in the following year, he appointed the seventeenth of May for the holding of services in all the churches and chapels-of-ease in order to implore Providence to mitigate an epidemic of measles, a malady then rapidly spreading.<sup>2</sup> Again, in 1696, the Governor issued his proclamation calling upon the people to offer up, on a day set apart, special prayers of thanksgiving<sup>3</sup>; and in

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habitants thereof, I, Sir Edward Andros, Knt. their Majestys' Lt. and Govr. General of Virginia, with the advice and consent of the Council, do, therefore, hereby appoint that, on Sunday, the fifth day of this instant March, prayers and supplications be made to Almighty God at James city for the continuance of His blessings, and that He will be graciously pleased to give His Divine assistance to the proceedings of the said Genl. Assembly, And that on Sunday the 19th of this Instant, the same be solemnized in the respective churches and chapels throughout this whole Colony and Dominion, And do desire and require all ministers and readers to be diligent in the due performance of their duties accordingly at the times and places appointed that all persons may join in their prayers and supplications to Almighty God in imploring his Blessings and Assistance upon this extraordinary occasion—Given under my hand, and the Seal of the Colony and Dominion this first day of March, in the 5th year of the Reign of our Sovereign Lord and Lady, King William and Queen Mary, Anno Dom. 1692.

"To Sheriff of Henrico County or his Deputy,

"E. ANDROS.

"God save the King and Queen. *Vera Copia.*" We find the following entry in the Minutes of the General Assembly for 1692: "Ordered that Mr. Speaker give the thanks of the House to Mr. Stephen Fouace for his sermon preached before ye General Assembly on the Public Thanksgiving Day." Minutes of Genl. Ass., April 16, 1692, Co. Entry Book, 1682-95.

<sup>1</sup> Essex County Records, vol. 1692-5, p. 201, Va. St. Libr.

<sup>2</sup> Henrico County Records, Orders June 1, 1696.

<sup>3</sup> Essex County Records, vol. 1692-5, p. 254, Va. St. Libr.



1698, when there was an extraordinary mortality prevailing in some parts of the Colony, in consequence of a disorder which it was feared would further widen its ravages, the same official designated a day of fasting for observance by the inhabitants of Jamestown where the disease was most violent; and a later day by the remaining population of Virginia, whether as yet attacked or not.<sup>1</sup>

There are many proofs that these appointments by the Governor of days for general humiliation or thanksgiving had the sympathetic approval of the great body of the people; and that they were celebrated throughout the Colony with feelings of unaffected heartiness and reverence.

Perhaps, under no circumstances did the religious spirit of the Virginians in the Seventeenth century find more remarkable expression than when they came to write their last wills. Some examples of this testamentary piety may be given. In 1656, Robert Dunster bequeathed "his soul to God and his sin to the Devil."<sup>2</sup> Thomas Hunt, of Northampton county, was not content with such summary brevity: in his will, he asserted his great sorrow for his iniquities; his belief in their remission and forgiveness through the merits and sacrifices of Christ; his faith in the Resurrection and Final Judgment; and his absolute assurance of inheritance of eternal happiness in the life hereafter.<sup>3</sup> John Godfrey, of Rappahannock, was even more

<sup>1</sup> British Colonial Papers, B. T. Va., 1698, vol. vi., p. 357. In 1692, Walter Clotworthy and his housekeeper were indicted in Henrico County for working on a fast day; see Records, vol. 1688-97, pp. 321-2, Va. St. Libr.

<sup>2</sup> Isle of Wight County, Wills for 1656. Dunster was a clergyman.

<sup>3</sup> Northampton County Records, vol. 1654-5, folio p. 90.

elaborate in his testamentary confessions:—he began by declaring that he was in his senses only by “leave of Almighty God”; and that God alone knew how soon it would be before a mortal sickness would fall on him. Divine justice required that, for the “sins and wickedness daily enacted among us,” all the people should be cut off without mercy; not, it appears, indirectly by the divine sword, as it were, but directly by the Indian tomahawk. “May the Lord, however,” he writes, “not suffer us to come to such an untimely end as to be destroyed by the heathen, but we can expect no other, for without sound repentance from ye bottom of ye heart, there is small hope of grace.” “This is to certify to all persons whom it may concern,” he concludes, “that I bequeathe my soule to Almighty God that gave it to me unto ye meritorious death and passion of my blessed Saviour and Redeemer, Jesus Christ, that was crucified for my sins.”<sup>1</sup> Col. John Stringer, the presiding justice of the Northampton county court, decided that he could not advance the cause of religion better than by an explicit confession of faith in his will. “I bequeathe my soul,” he wrote, “to God, who first gave it to me, Father, Son and Spirit in Unity and Trinity, and Trinity in Unity, who hath redeemed and preserved me by and through Jesus Christ, and also died for my sinns, and for the sinns of all peoples that truly believe in Him by unfeigned faith and repentance, for whose sake and loving kindness I hope to entertain everlasting life, wherefore, Dear Father, have mercy upon my soul.”<sup>2</sup>

Innumerable other last testaments couched in language marked by equal religious devotion might

<sup>1</sup> Rappahannock County Records, vol. 1677-82, p. 48.

<sup>2</sup> Northampton County Records, vol. 1689-98, p. 8.

be quoted. In some, an anti-climax appears, which shows that the thought of death for the time being had dulled the makers' sense of humor; for instance, after a most fervent expression of repentance for sin and of hope of salvation, there will follow immediately the bequest of a "feather bed" or "female calf" to some near kinsman. John Emerson, having given directions in his will that his body should be "civilly and decently interred," and having prayed to God to "send us all a happy meetinge in his Kingdom," concluded as follows: "I desire that it may be remembered that my executors doe receive of Anne Sowerby my bolster belonging to this bed under me."<sup>1</sup> Another testator, after a moving expression of his religious hopes closes with these words: "I give to Thomas Parramore one serge suit, and to Francis Parramore one yearling heifer."<sup>2</sup>

• George Jordan of Surry county, provided in his will for a pious observance which was to end only with the "destruction of the world"; he directed that, on the fifteenth day of every October, a sermon in his daughter's memory should be delivered in the house he had occupied in his lifetime; and when that day happened to fall on Sunday, the Holy communion was to be administered also. All the people residing in the neighbourhood were to be invited year after year, and entertained with an ample supply of meat and drink before they departed for their homes. Anticipating that the day's celebration in the manner thus laid down might fall into disuse as time went on, he prescribed in his will that whoever should come into possession of the land, "although it be a thousand

<sup>1</sup> Surry County Records, Wills for 1676.

<sup>2</sup> Northampton County Records, vol. 1655-58, p. 64.

generations hence," should forfeit it, should he fail to "perform this sermon and prayer."<sup>1</sup>

One of the most ordinary provisions of wills at this period was that the testators' children should be taught how to read the Bible.<sup>2</sup>

Some of the Virginians were not content to confine their final expression of faith, or their last wishes to their wills; there is at least one very remarkable instance in which the tombstone was made to complement the last testament in this respect. Colonel Richard Cole, of Westmoreland county, who, there is reason to think, had led a somewhat wayward and rollicking life, ordered the following verse to be cut into the slab which was to cover his grave:

"Here lies Dick Cole, a grievous sinner,  
That died a little before dinner,  
Yet hoped in Heaven to find a place  
To satiate his soul with grace."<sup>3</sup>

The few letters belonging to private correspondence which have descended to us from the Seventeenth century breathe a spirit as full of reverence for religion as the spirit observable in such a large proportion of the wills recorded during the same period. It is especially conspicuous in the letters of William Fitzhugh, a man distinguished for pious feeling; and it is far from lacking in those of the elder William Byrd, although these show in many ways less sensibility. "I hope," he wrote to his son in London, "that (your master) will see you improve your time, and that you become

<sup>1</sup> Surry County Records, vol. 1671-84, p. 295, Va. St. Libr.

<sup>2</sup> An example will be found in a will preserved in the Northampton County Records, vol. 1666-72, folio p. 55.

<sup>3</sup> Westmoreland County Records, vol. 1665-77, p. 186.

careful to serve God as you ought, without which you cannot expect to do well here or hereafter."<sup>1</sup>

It frequently happened that religious books were so highly valued by their owners that they were by name bequeathed to children or friends; especially was it common to make gifts of Bibles by last will<sup>2</sup>; and other volumes were often included with them. For instance, in 1675, Devereux Godwin, of Northampton, who was apparently a blacksmith, left his son, not only his Bible, but also a copy of *Smith's Sermons*, both of which were, no doubt, endeared to him by long and familiar use.<sup>3</sup> Robert Hodge, of Lower Norfolk, in 1681, bequeathed to each of his godsons and god-daughters residing in Virginia, a Bible, and also two volumes of sermons, to be delivered to them before two years had passed after his death.<sup>4</sup> Sometimes, the bequest of a religious book is found in an odd association with other bequests of a less pacific character; for example, in 1640, John Holloway left by will to Peter Long "a muskett, and Raine on ye Ephesians," a combination of testamentary gifts that recalls the famous lines of Hudibras about the Puritans of his day, "who did build their faith upon the holy text of pike and gun."<sup>5</sup> At this time, however, the Indians were suspected of restlessness, which, in a few years, actually led to the second great massacre of the whites;

<sup>1</sup> Letters of William Byrd; see also p. xlii. of Introduction to Bassett's edition of the second William Byrd's *Works*.

<sup>2</sup> See Lower Norfolk County Records, vol. 1651-6, p. 47. Nathaniel Hill, of Henrico County, bequeathed his "big Bible" to his son; but should this son die first, then to John Worsham; see Records, vol. 1677-92, orig. p. 476.

<sup>3</sup> Northampton County Records, vol. 1674-9, p. 123.

<sup>4</sup> Lower Norfolk County Antiquary, vol. ii., p. 34; see also Lower Norfolk County Records, Orders Oct. 18, 1681.

<sup>5</sup> Northampton County Records, Orders Aug. 31, 1643.

the bequest of a musket was something to excite gratitude at an hour when, in numerous homes, the morning and evening prayers were always read with several guns placed close at hand and prepared for instant use.<sup>1</sup>

Religious books form one of the most ordinary entries in the inventories of personal estates appraised during the Seventeenth century. There were few such estates of even moderate proportions that did not include either a couple of Bibles, or that almost equally popular and revered volume, *The Whole Duty of Man*.<sup>2</sup> Among the articles of value in Walter Broadhurst's possession were two Bibles one of which was ornamented with silver clasps and a silver chain.<sup>3</sup> Mrs. Jane Hasty owned one Bible and two volumes of sermons,<sup>4</sup> and Francis Eppes, a Bible in quarto, containing both the service and the Apocrypha.<sup>5</sup> Two Bibles formed a part of the personal estate of Chris-

<sup>1</sup> In 1643, a general law required that at least one member of every family in the Colony should bring with him to church on Sunday a fixed gun, with the necessary amount of powder and shot; Hening's *Statutes*, vol. i., p. 263.

<sup>2</sup> Bibles were for sale in all the colonial stores. The following from the Northampton County Records for 1684 is of interest in this connection: "Elizabeth Daniell came into the store and called to ye merchant Jackson for one of his Bibles, and he handed her one, and she bid ye Jackson's assistant that was booking what goods he delivered to booke her ye s<sup>d</sup> booke. And as she had ye sd. Bible in her hand, she said to Richard Sheppard 'Now if you will downe on your knees, I will give ye this Bible,' which he promised her to do, and on that she gave him ye Bible, and he had it in his pocket, and ye said Merchant afterwards said that was ye ninth Bible ye said Elizabeth had had of him." Northampton County Records, vol. 1683-89, p. 105.

<sup>3</sup> Westmoreland County Records, Orders April 17, 1661.

<sup>4</sup> Northampton County Records for 1665. This volume is improperly marked 1655-8; see last part, p. 13.

<sup>5</sup> Henrico County Records, vol. 1677-92, orig. p. 97.

topher Branch<sup>1</sup>; and the sermons of Robert Sanderson and the works of Josephus a part of the Farrar estate.<sup>2</sup> A citizen of Henrico, in 1685, owned a large illustrated Bible, appraised at one pound sterling and five shillings, or twenty-five dollars in our present American currency.<sup>3</sup> John Lewis, who also resided in Henrico, possessed a Cambridge print Bible in quarto.<sup>4</sup> The family Bible of Mrs. Elizabeth Digges was valued at one pound sterling after it had been long in use.<sup>5</sup> The personal estate of William Cocke included three Bibles, one testament, one *Practice of Piety*, one Common Prayer Book and one Psalter.<sup>6</sup>

The *Practice of Piety* seems to have been a favourite religious book in Virginian households at this time; among those who possessed it were John Lankfield and Captain Henry Woodhouse, of Lower Norfolk.<sup>7</sup> William Kennedy, of the same county, owned a copy of *Pilgrim's Progress*,<sup>8</sup> while John Panewell, of Northampton, owned a copy of the *Exposition of Paul to the Thessalonians*.<sup>9</sup> Among the numerous works composing the library of Charles Parkes, who was a citizen of the latter county, were fifteen books of divinity, representing about thirty volumes in all, some bound in

<sup>1</sup> Henrico County Records, vol. 1677-92, orig. p. 218.

<sup>2</sup> *Ibid.*, vol. 1677-92, orig. p. 267.

<sup>3</sup> *Ibid.*, vol. 1677-92, orig. p. 321.

<sup>4</sup> *Ibid.*, vol. 1688-97, p. 105, Va. St. Libr.

<sup>5</sup> York County Records, Inventory, Aug. 24, 1692; see also *William and Mary College Quart.*, vol. iii., p. 247.

<sup>6</sup> Henrico County Records, vol. 1688-97, p. 490, Va. St. Libr. This list might be almost indefinitely extended.

<sup>7</sup> Lower Norfolk County Records, Orders Nov. 30, 1640; also vol. 1686-95, year 1687.

<sup>8</sup> Lower Norfolk County Antiquary, vol. ii., p. 35.

<sup>9</sup> Northampton County Records, vol. 1680-92, p. 315. Panewell was no doubt the original form of the well known Virginia name Pannill.

quarto, but the majority in large octavo. One of these works was Baxter's *Saints' Everlasting Rest*, which enjoyed an extraordinary degree of popularity in those times.<sup>1</sup> Of the three hundred and ninety-one works composing Ralph Wormeley's library at Rosegill, one hundred and twenty-three bore upon religious or moral topics.<sup>2</sup> The library of Arthur Spicer, a distinguished lawyer, who lived toward the end of the century, contained among numerous other works, four Bibles printed in English, and one in Latin; a large *Concordance of the Bible*, a *Practice of Piety*, and several volumes of sermons; it also contained Perkins on *Divinity*, Brown's *Errors*, Exon's *Contemplations*, and Sir Matthew Hale's work of the same name, Usher's *Answer to the Jesuits*, Prynne's *Prelacy*, and a *Defence of Constantine*; also treatises on church canons, church discipline, and the Christian policy; and discourses on the Principles of Natural Religion and the Doctrines of the Christian Faith. Standard volumes of a more general nature were the *Decay of Piety*, the *Vindication of Godliness*, the *Marrow of Divinity*, *Moral Gallantry*, and *Bowels of Tender Mercy*.<sup>3</sup> Among the works treating of religious and moral subjects found in the library of Richard Watkins, of York county, in 1669, were Robotham's *Preciousness of Christ*, Roberts's *Evidences*, *Vanity of Worldly Pleasures*, Small's *Psalm Books*, and Matby's *Legacy*.<sup>4</sup> These religious works belonging to the Wormeley, Spicer, and Watkins collections reveal a rather wide field of moral studies; and they probably represent the ground covered by the religious reading of a majority

<sup>1</sup> See Northampton County Records for 1696, Parkes Inventory.

<sup>2</sup> William and Mary College Quart., vol. ii., p. 170.

<sup>3</sup> *Ibid.*, vol. ii., p. 170.

<sup>4</sup> York County Records, vol. 1664-72, p. 453, Va. St. Libr.



of cultivated Virginians of that day who were not ordained clergymen.

Additional light is thrown upon the religious spirit of the colonists in the Seventeenth century by the number of testamentary gifts during that period for the benefit of the destitute. I have, in a former work, referred to several among those made to the poor residing in England<sup>1</sup>; a few made to indigent persons in Virginia may be mentioned to show their general character. In 1655, Captain John Moon, a merchant and planter left by will four cows to serve as a stock for-ever for fatherless children without means of support or education, superannuated persons past their labour, and lame persons greatly improverished, whose homes were situated in the lower parish of Isle of Wight county.<sup>2</sup> Five years later, Samuel Fenn, of York, bequeathed five pounds sterling to the use of Middleton parish<sup>3</sup>; and a similar bequest was, about 1672, made to the parish of Martin's Brandon<sup>4</sup>; both of which gifts were, no doubt, primarily for the relief of the indigent. In 1667, Daniel Boucher, of Isle of Wight county, gave directions by will that his executors should furnish one loaf of bread to every destitute person to be found in his parish; and also an ox to the whole number of poor residing there. The testator's object was evidently to provide a feast at which every pauper might at least for once enjoy a hearty meal.<sup>5</sup> A few years later, Robert Griggs, of Lancaster, bequeathed twenty thousand pounds of tobacco to the poor; and he further

<sup>1</sup> See Bruce's *Social Life of Virginia in the Seventeenth Century*, chapt. ix.

<sup>2</sup> Isle of Wight County, Wills for 1655.

<sup>3</sup> York County Records, vol. 1657-62, p. 248, Va. St. Libr.

<sup>4</sup> Robinson Transcripts, p. 259.

<sup>5</sup> Isle of Wight County Records, vol. 1661-1719, p. 53.

revealed his benevolent disposition by ordering his slaves to be liberated, as soon as each should reach a specified age.<sup>1</sup> Ralph Langley, of York, in 1683, left by will one third of his residuary estate to the destitute belonging to his parish<sup>2</sup>; and Edward Deeley, following the example of Langley, who had also endowed his parish church, bequeathed twenty shillings to the use of the church in which he himself had been in the habit of worshipping.<sup>3</sup> In 1690, George Spencer, of Lancaster, in his will gave directions that ten thousand pounds of tobacco, forming a part of his estate, should be distributed among the poor of Whitechapel parish<sup>4</sup>; and two years afterwards, Benjamin Read made a similar testamentary gift to the destitute of Mulberry Island parish, to be paid by the sale of land in England which he owned.<sup>5</sup> Richard Trotter, in 1699, left one thousand pounds of tobacco to the destitute inhabitants of Charles parish, in York.<sup>6</sup>

<sup>1</sup> Lancaster County Will Books, vol. 1674-89, folio p. 90.

<sup>2</sup> York County Records, vol. 1675-84, orig. p. 485.

<sup>3</sup> Henrico County Records, vol. 1688-97, p. 63, Va. St. Libr.

<sup>4</sup> Lancaster County Records, vol. 1690-1709, p. 11.

<sup>5</sup> York County Records, vol. 1690-94, p. 257, Va. St. Libr. The amount of Read's bequest was twenty pounds sterling, which had then the purchasing power of five hundred dollars at the present day.

<sup>6</sup> *Ibid.*, vol. 1694-1702, p. 194, Va. St. Libr. This list might be greatly extended.

## CHAPTER III

### Public Morals: Sabbath Observance

THE religious spirit of the people was reflected in a more conspicuous way still in the strict regulations adopted to ensure a proper observance of the Sabbath. I have already dwelt upon the provisions for church attendance which formed a part of the "Divine and Martial Laws" enforced during the administrations of Gates and Dale. During Argoll's administration, the penalty for failing to be present at divine services on Sunday and on a holiday, was, throughout the following night, to lie neck and heels in the Corp de Guard. Should the delinquent be a servant, the imprisonment was to continue for a week; but if a freeman, and it was his second offence, the punishment was to be prolonged for a whole month; whilst a third offence was to subject him to the like punishment for a year and a day.<sup>1</sup>

The first General Assembly to meet in Virginia passed a law requiring of every citizen attendance at divine services on Sunday. The penalty imposed for a failure to be present was not at this time so severe as during the arbitrary rule of Argoll; if the delinquent was a freeman, he was to be compelled to pay three shillings for each offence, to be devoted to the church; and should

<sup>1</sup> Argoll's Edicts, May 28, 1618; see Brown's *First Republic*, p. 278, and Randolph MS., vol. iii., p. 144.

he be a slave, he was to be sentenced to be whipped.<sup>1</sup> The penalty of three shillings had by 1632, been reduced to one, but, in the course of that year, the General Assembly strictly enjoined all commanders, captains, and churchwardens to see to it that no person remained away from church without lawful excuse; and they were warned that, should they omit to perform their duty in this respect, they must "answer before God for such evils and plagues wherewith Almighty God may justly punish his people for neglecting so good and wholesome a law."<sup>2</sup> That the statute was rigidly enforced is shown by the number of cases in which persons were summoned before the county courts to answer for what was described as "a breach of the Sabbath."<sup>3</sup>

A violation of the Sabbath, it seems, might, in these early times, be committed in a great variety of ways, a few of which may be mentioned as examples. For instance, it was not lawful to go on a journey unless with the view of attending divine services, or performing some duty not to be deferred; nor was the use of firearms allowed except to frighten marauding birds from the cornfields, or to resist an Indian attack.<sup>4</sup> In 1648, Oliver Segar, of new Poquoson parish, in York, was presented by the grand jury for the offence of fishing on Sunday, which, in his case, was rendered more

<sup>1</sup> Minutes of Assembly, 1619, p. 28, *Colonial Records of Virginia*, Senate Document, Extra 1874. This law was re-enacted in substance in 1629; see Randolph MS., vol. iii., p. 213.

<sup>2</sup> Hening's *Statutes*, vol. i., p. 155.

<sup>3</sup> See the case of Robert Martin in Lower Norfolk County Records, Orders Febr. 15, 1642.

<sup>4</sup> Hening's *Statutes*, vol. i., pp. 261, 434. An Act of Assembly passed as late as 1696 forbade travelling on Sunday; see Colonial Entry Book, vol. lxxxix., p. 182. This was but one of repeated enactments of the same law.

heinous by the fact that, on this particular day, the sacrament had been administered. As a punishment for his sacrilegious conduct, Segar was ordered by the county court to build a bridge across a swamp through which the road to the parish church had been laid off.<sup>1</sup> A less expensive punishment seems to have been inflicted on Henry Truit, found guilty in Accomac of the same offence.<sup>2</sup> A fine of one hundred pounds of tobacco was, about the middle of the century, imposed on Thomas Williams, of Lower Norfolk, for getting drunk on the Sabbath, and he was ordered to pay that amount into the county treasury.<sup>3</sup> In 1650, Henry Crowe, having found it impossible to resist the temptation of drawing his tobacco plants on Sunday, owing very probably to the first good season for doing so having fallen on this day, was summoned for that offence before the county court, and only escaped a heavy fine by an humble promise to amend.<sup>4</sup> This incident throws into a strong light the authorities' determination to enforce a strict observance of the Sabbath; in a community given over, practically to the exclusion of all other interests, to the cultivation of tobacco, it must have appeared to many an excusable act to take advantage of what was perhaps the first moist day, and perhaps might be the last, for weeks, to transfer their plants to the field.

About the middle of the century, the grand jury of Lower Norfolk made a sharp complaint as to the general indifference to the observance of Sunday at that time prevailing in all parts of the county; and they

<sup>1</sup> York County Records, vol. 1638-48, p. 386, Va. St. Libr.

<sup>2</sup> Accomac County Records, vol. 1673-6, p. 262.

<sup>3</sup> Lower Norfolk County Records, vol. 1646-51, p. 12.

<sup>4</sup> *Ibid.*, vol. 1646-51, p. 152.

proceeded to charge the entire population with a breach of the day, but at the same time softened the character of the offense by stating that they considered it was largely due to the lack of a godly and competent minister; and they urged that the vacancy should be at once supplied in order to bring about a change in so deplorable a condition. They indicted Thomas Wright for breaking the Sabbath himself, and causing his laborers to do so; and also Mrs. Elizabeth Lloyd for requiring her servants, on the same day, to follow all their customary employments. George Hankings was presented because he was in the habit of leaving his house on Sunday with his tools in his hands; and Thomas Goodrich, for having gone on two long journeys at times when he should have been in attendance at divine service.<sup>1</sup>

An Act, passed in 1658, declared that, under no circumstances, should it be legal to transport goods by boat on Sunday. This was designed to prevent the loading and unloading of sea-going vessels on that day, the penalty for which offence was either a fine of one hundred pounds of tobacco, or confinement in the stocks.<sup>2</sup> The same year, it was strictly forbidden to deliver any writ on the Sabbath; it seems to have been the sheriffs' habit up to this time to serve all such documents at the church door, first, because they were able to find there any person they were seeking, and secondly, because they thus avoided the fatigue and loss of time that would have been entailed by a ride to this person's home, which perhaps was situated

<sup>1</sup> Lower Norfolk County Antiquary, vol. iii., p. 29; see also Lower Norfolk County Records, vol. 1651-6, p. 113. Some of these offenders were of the Quaker faith.

<sup>2</sup> Hening's *Statutes*, vol. i., p. 434.

on a remote plantation. These officers' intrusion at the church meetings in their character of sheriffs was justly regarded as repugnant to the religious aspects of such an occasion.<sup>1</sup>

If possible, the determination to enforce the strict observance of the Sabbath was, during the last quarter of the century even stronger than it had been previous to that period. Not infrequently, however, as formerly, the person indicted for being absent from church was able to offer a good excuse; for instance, in Accomac, in 1663, one person evaded the fine by proving that, on the Sunday when he was declared to be delinquent, he was not present in the county at all; and another, that he had transferred his membership from Nandua church to Occahannock.<sup>2</sup> In 1665, eleven persons were indicted in Northampton for violating the Sabbath by remaining away from the parish church<sup>3</sup>; ten years later, the grand jury of Surry presented twenty-nine for the like offense, and among them were citizens of such prominence as Bartholomew Owen, John Hunnicutt, and Thomas Busby. It is quite probable that the larger number of these delinquents were persons belonging to the Quaker sect, which had now begun to cause some disturbance in the Colony.<sup>4</sup> A few years later, eleven persons were presented in Surry for the same offense; and a majority of these were perhaps of the same faith.<sup>5</sup>

It was, however, not always the dictates of conscience that kept the delinquent away from the regular religious

<sup>1</sup> Hening's *Statutes*, vol. i., p. 457.

<sup>2</sup> Accomac County Records, vol. 1663-6, folio p. 54.

<sup>3</sup> Northampton County Records, vol. 1664-74, folio p. 10.

<sup>4</sup> Surry County Records, vol. 1671-84, p. 120, Va. St. Libr.

<sup>5</sup> *Ibid.*, vol. 1671-84, p. 299, Va. St. Libr.

services; it was observed one Sunday, in 1678, that there were very few persons present in the principal church of Accomac, and, at the same time, there were "above twenty" drinking at John Cole's house at the hour "of ye sermon." Cole, it seems, owned the most popular tavern situated in the county,<sup>1</sup> and it was here that a part of the congregation were passing the interval of divine service, while the benches in the sacred edifice near by were almost empty of worshippers. This happened only a few years after the close of the Insurrection of 1676, and it is quite probable that that turbulent event had left the body of the people in a somewhat demoralized state. This view is confirmed by the grand jury's action in Lower Norfolk in the same year in which these citizens of Northampton showed so openly their disregard of the consecrated character of Sunday,—that body deliberately presented every clergyman in the county as well as all other persons there possessing ecclesiastical authority, because they had failed to enforce attendance on divine service as celebrated "according to ye canons of ye Church of England"; in consequence of which, the Sabbath had been profaned by evil disposed men and women "who made of the Lord's Day what their pleasures led to." <sup>2</sup> !/

In the course of 1681, thirty-two persons, most of whom, perhaps, belonged to the dissenting sects, were indicted in Surry for omitting to go to church; and in the following October, thirteen. It shows the peaceful demeanour of the people of this county that the only other offense, pronounced to be criminal by the law, committed by them during this year was

<sup>1</sup> Accomac County Records, vol. 1676-8, p. 127.

<sup>2</sup> Lower Norfolk County Records, vol. 1675-86, p. 40.



defamation.<sup>1</sup> It was provided in the bond of Samuel Thompson, an innkeeper of Surry in 1681, that he should suffer no persons except his servants to remain in his tavern on holidays and Sundays during the hours divine services were in progress in the parish church,<sup>2</sup> —a far from unusual proof of the extraordinary care taken by the county courts to preserve the sacred character of these days from being violated by idle dissipation. Six persons, who, in 1682, had been indicted in York for their failure to attend church, excused themselves on the ground that they were Quakers; nevertheless each was fined fifty pounds for his offense.<sup>3</sup> In the following year, several persons were indicted in this county for absenting themselves from divine worship, but as it was the first time they had done so, they were dismissed without being mulcted.<sup>4</sup> Two years later, nine persons were indicted; but it is again probable that most of these were members of a dissenting sect.<sup>5</sup>

After the passage of the Toleration Act by Parliament, which allowed all persons, of whatever religious denomination, to attend their own church, the authorities of Virginia, in response to the general sentiment of the people, continued to enforce respect for the sacred character of Sunday. In 1699, petitions, proceeding

<sup>1</sup> Surry County Records, vol. 1671-84, pp. 441, 465, Va. St. Libr.

<sup>2</sup> *Ibid.*, vol. 1671-84, p. 576, Va. St. Libr.

<sup>3</sup> York County Records, vol. 1675-84, pp. 448, 462, Va. St. Libr. Four of these Quakers bore the names respectively of Robert Pritchard, Isaac Goddin, Edward and James Thomas. In 1684, John Goode was indicted in Henrico county because, during sixteen years' residence in the parish, he had not once attended church. He also was probably a Quaker; see Henrico County Records, vol. 1677-92, orig. p. 274.

<sup>4</sup> York County Records, vol. 1675-84, orig. p. 547.

<sup>5</sup> *Ibid.*, vol. 1684-7, p. 92, Va. St. Libr.

simultaneously from Lancaster, Gloucester and Accomac counties, all lying widely apart, were laid before the House of Burgesses, in which it was prayed, as a means of saving the Sabbath from violation, that every citizen, to whatever sect he might belong, should be compelled on that day to attend "some congregation or place of worship."<sup>1</sup> It was, no doubt, under the influence of this proposition that, in the course of the same year, the General Assembly adopted a law which provided that any adult failing to be present at some form of religious services should be fined five shillings, or fifty pounds of tobacco.<sup>2</sup>

We have already seen of what a violation of the Sabbath was deemed to consist previous to the middle of the century. A few instances may be given to show the character of what was considered to be such after that date. In 1678, Edward Hastell, of Lower Norfolk, was indicted because he had been seen carrying a gun on Sunday. Another person, residing in the same county, was, a few years afterwards, presented because he had on that day, hired his horse out; a third, because he had sent one of his servants to a neighbouring tannery with a hide; and a fourth because he had trimmed and replanted his nursery.<sup>3</sup> Sarah Purdy was indicted, in 1682, in the same county, for shelling corn on Sunday<sup>4</sup>; John Fulford, in 1685, for fetching a pair of shoes from the maker's at his master's

<sup>1</sup> Minutes of House of Burgesses, May 10, 1699, B. T. Va., vol. lii.

<sup>2</sup> Henning's *Statutes*, vol. iii., p. 168. In 1690, Nicholson issued a proclamation calling upon the justices of the peace to enforce the laws passed to prevent a violation of Sunday; see York County Records, vol. 1687-91, p. 522, Va. St. Libr.

<sup>3</sup> Lower Norfolk County Records, Orders Oct. 16, 1678; vol. 1675-86, p. 202.

<sup>4</sup> *Ibid.*, Orders June 17, 1682.

command; John Carpenter and Thomas Cortney, for fishing; Walter Wilder, for killing a deer; John Fleetwood, for going on a journey; Thomas Gordon, for selling liquor; and Elizabeth Cook, for getting drunk.<sup>1</sup> John Wright, of York, was presented because he had, on Sunday, ordered his slaves to bring water as a preparation for planting tobacco.<sup>2</sup> In 1686, Henry Turner was indicted in Henrico for stripping tobacco on Sunday; and in Middlesex, in 1690, Alexander Smith, also indicted for the same offense, was tried by a jury and condemned to pay a large fine for the use of the parish.<sup>3</sup> Two years afterwards, Francis James, of Richmond county, was presented for selling cider on the same day<sup>4</sup>; whilst about the same time, William Cocke, of Henrico, was presented for "carrying a bag of wheate" on the Sabbath<sup>5</sup>; Robert Deputy, of Essex, for playing cards<sup>6</sup>; Thomas Smith, of Accomac, for fetching a runlet of cider; John Fenn, of the same county, for picking up tobacco<sup>7</sup>; and Henry Jackson, of Northampton, a mulatto, for driving a cart.<sup>8</sup>

Sometimes the violation of the Sabbath took a more turbulent form; for instance, in 1692, William Thorn-

<sup>1</sup> Lower Norfolk County Records, vol. 1675-86, p. 219<sup>2</sup>.

<sup>2</sup> York County Records, vol. 1675-84, orig. p. 606.

<sup>3</sup> Henrico County Records, vol. 1677-92, orig. pp. 402, 431. "On going to Turner's house, the deponent met Turner at ye door with about half a dozen leaves of stripped tobacco in his hands, and going in, deponent see Turner's wife a stripping tobacco; ye deponent asked him saying: 'Harry what makes you stripp tob<sup>o</sup> on Sunday?' and he replied he wanted one layer to fill up a hogshead." The reference to Smith will be found in Middlesex County Records, Orders Feby. 2, 1690.

<sup>4</sup> Richmond County Records, Orders Nov. 2, 1692.

<sup>5</sup> Henrico County Records, Orders June 2, 1690.

<sup>6</sup> Essex County Records, Orders April 10, 1693.

<sup>7</sup> Accomac County Records, vol. 1670-97, pp. 146, 176.

<sup>8</sup> Northampton County Records, 1689-98, p. 427.

bury, of Richmond county, was indicted because he had, on several occasions, at divine service, uttered extravagant words in an audible voice, which had greatly disturbed the congregation; and he had even gone so far as to lay violent hands upon persons who were present.<sup>1</sup> Sometimes, the violation took the form of profane swearing as well as of fighting<sup>2</sup>; sometimes, as we have already seen, of fiddling and dancing.<sup>3</sup>

It is evident from the preceding instances, which — might be multiplied almost indefinitely, that, during the Seventeenth century, the supervision exercised by the authorities to ensure a proper observance of the Sabbath was, in some respects, quite as strict in Virginia as it was in New England, where the stern and austere code of the Puritans was so rigidly enforced in all the departments of life. Even the most trivial violations of the sacred character of the day were invariably punished; and this seems all the more remarkable in a community where all the amusements and pleasures within the people's reach were heartily encouraged provided that they were not carried to a point dangerous to the peace and moral health of society.

<sup>1</sup> Richmond County Records, Orders Nov. 2, 1692.

<sup>2</sup> See case of John Knox, Elizabeth City County Records, Orders Sept. 18, 1695.

<sup>3</sup> In addition to the cases already mentioned, see that of William Johnson in Accomac County Records, vol. 1697-1705, folio p. 43.

## CHAPTER IV

### Public Morals : Drunkenness and Profanity

WHILE there was a strong disposition among the members of all classes to drink rather freely, still there are many evidences that, when this disposition was pressed to the point of open intemperance, the law stepped in to check and repress it. There was no opposition to the enjoyment of liquor taken in moderation, but there was a determined hostility to its being taken in excess. The regulations to prevent this were among the strictest adopted during that period to root up vice in general; at the same time, they reveal that there was no intention to put an end to a reasonable degree of drinking.

As early as 1619, when the first General Assembly to meet in the Colony convened, a law was passed to punish drunkenness. If it happened to be the first offence of the person guilty, he was to be merely reprimanded in private by the minister of his parish; if his second, then he was to be rebuked in public; and if his third, was to be imprisoned during twelve hours in the house of the provost marshal. If the drunkenness was repeated, in spite of this last penalty, he was to receive such punishment as the Governor and Council should think his case should call for.<sup>1</sup> In 1623, the

<sup>1</sup> Minutes of Assembly, 1619, p. 20, *Colonial Records of Virginia*, Senate Doct., Extra, 1874.

General Assembly heartily confirmed a proclamation recently issued by those officers for the prevention of the same vice.<sup>1</sup> Under an Act passed in 1631, a person guilty of intoxication was required to pay five shillings in every instance in which he had been detected<sup>2</sup>; and again, in the following year, the same penalty was imposed.<sup>3</sup>

That the repression of drunkenness was strictly enforced in all parts of the Colony is revealed by numerous entries in the county records. For example, in 1638, John Vaughan, Samson Robins, and their wives, of Accomac, were condemned to sit in the stocks during the progress of divine service in the parish church because they had been found intoxicated; and twelve months afterwards, the same punishment was inflicted on David Wheatley for the like offence.<sup>4</sup> This sentence was perhaps passed on these persons owing to their inability to pay the fine prescribed. In 1648, the county court of Lower Norfolk required Rowland Morgan, as a penalty for his having been guilty of the "loathesome sinn of drunkenness," to build a pair of stocks, and set them up in front of the court-house door.<sup>5</sup> At this time, the common punishment for this form of vice seems to have been, at least for members of the very lowest class in the community, to place the culprit in this implement, where he would be exposed to the gaze, and perhaps to the missiles of the jeering onlookers.<sup>6</sup> If, however, the culprit was a

<sup>1</sup> British Colonial Papers, vol. iii., No. 9.

<sup>2</sup> Randolph MS., vol. iii., p. 217.

<sup>3</sup> Hening's *Statutes*, vol. i., p. 193. This provision was taken from the English Statute, 4 Jac. I., Cap. 5.

<sup>4</sup> Accomac County Records, vol. 1632-40, pp. 129, 145, Va. St. Libr.

<sup>5</sup> Lower Norfolk County Records, vol. 1646-51, p. 104.

<sup>6</sup> See a case in Lower Norfolk County Records, vol. 1656-66, p. 18.

servant, or a person not yet of age, his master or parents could obtain for him exemption from such disgrace by paying his fine; and, no doubt, this course was also open to any person found guilty of the same vice who had sufficient means at his disposal to meet the charge.<sup>1</sup> By an Act of Assembly passed in 1657-8 it was declared that no drunkard should be capable of holding public office; and three convictions were to be taken as proving such a character.<sup>2</sup>

Perhaps, there was no county in Virginia during the Seventeenth century in which there was more laxness in the smaller morals than in Henrico, a condition quite probably due to the fact that the county was both thickly settled and situated directly on the frontier. It will be interesting to investigate how far drunkenness prevailed in that community at this period as almost certainly reflecting the most extreme license in this form of self-indulgence then to be observed in Virginia. The reports of the grand juries, show, however, that nowhere was the vice more carefully watched or more promptly punished. In the presentments for 1678 seven citizens were named as having been "disguised with drink," two of whom were of the highest social rank.<sup>3</sup> In 1685, the number indicted at one session of

<sup>1</sup> Hening's *Statutes*, vol. i., p. 433. See case of Richard Wilson in Northampton County Records, vol. 1657-64, folio p. 34. If the offense was attended with aggravated circumstances, it is probable that a fine alone was not considered to be sufficient punishment. The following is from the York Records: "Whereas Nicholas Tailor was presented to this Court by the vestry of the Poquoson for coming out of the church drunk, and in full view of the congregation in tyme of divine service, there spewing, It is ordered that for his sd. offense, he be put in the stocks, and there remain until released by the Court." York County Records, vol. 1664-72, p. 36, Va. St. Libr.

<sup>2</sup> Hening's *Statutes*, vol. i., p. 433.

<sup>3</sup> Henrico County Records, vol. 1677-92, orig. p. 70.

court did not exceed six; and each of these, it seems, had of his own motion admitted his guilt. One of the grand jurymen making the report presented a fellow jurymen, who promptly presented his accuser for the same offense. It is notable that, on this occasion, five of the grand jury had no charge of a like kind to advance against any person in the community.<sup>1</sup> At another session of the same court held in the course of this year, there were only two indictments for drunkenness<sup>2</sup>; while during the term held in June, 1686, three persons alone were presented for this vice; and in 1690, five. It shows the strict manner in which the grand jurymen interpreted their duty that, among those persons indicted in the course of 1690, was James More, who was presented on the ground that he had been overheard to say: "I am devilishly cold and fuddled."<sup>3</sup> In 1691, two cases were dismissed because the persons charged were able to swear that, although they had been drinking, yet they were in full possession of their senses, with memory perfect, and capable of performing any business assigned to them.<sup>4</sup> The court, however, declined to admit that the fact that a person was "deep in liquor" at the time was any palliation of violent conduct; when, in 1692, Captain Chamberlaine offered this as his excuse for breaking out of prison, to which he had been temporarily committed, the justices sternly replied that drunkenness was an ill argument "to justify any offence."<sup>5</sup> There seems to have been only one person indicted for intoxication

<sup>1</sup> Henrico County Records, vol. 1677-92, orig. p. 336.

<sup>2</sup> *Ibid.*, vol. 1677-92, orig. p. 312.

<sup>3</sup> *Ibid.*, vol. 1677-92, orig. p. 372; vol. 1688-97, pp. 133-4 Va. St. Libr.

<sup>4</sup> *Ibid.*, vol. 1682-1701, p. 299, Va. St. Libr.

<sup>5</sup> *Ibid.*, vol. 1677-92, p. 431, Va. St. Libr.



at the term of court held in April 1693; and at a later term held in the same year, only two were presented for the same vice.<sup>1</sup>

The authorities during the Seventeenth century appear to have been fully determined to repress as far as possible the evil habit of swearing. Under the Acts of 1619, a freeman or the head of a family, who, after three warnings, persisted in his profanity, was to be fined five shillings for the benefit of his parish church; and if the person guilty happened to be a servant, he was to be severely flogged unless his master consented to pay a fine equal to the one imposed upon a freeman for the same offence.<sup>2</sup> The law of 1631 required that, for every oath a person uttered, he should be mulcted in one shilling; and by the Act of 1657-8, such a person, if he had been sentenced for the same offence on three separate occasions, was to be rendered incapable of holding any public office.<sup>3</sup> If the person guilty was a servant or under age, then by the terms of this Act also, unless his fine was paid by his master or parents, he was to be punished in the discretion of the district magistrates or county justices.<sup>4</sup> Under the military regulations prevailing in 1674-5, a soldier who persisted in swearing after he had been convicted of it at least three times, was compelled to ride the wooden horse.<sup>5</sup>

In the course of 1685, Abram Womack, of Henrico,

<sup>1</sup> Henrico County Records, vol. 1688-97, pp. 407, 536, Va. St. Libr. The innkeepers, for allowing drunken disorder in their taverns, were frequently deprived of their licenses; see for an instance, Lower Norfolk County Records, 1646-51, p. 126.

<sup>2</sup> Minutes of Assembly, 1619, p. 27, *Colonial Records of Va., State Senate Doc., Extra*, 1874.

<sup>3</sup> Randolph MS., vol. iii., p. 217.

<sup>4</sup> Hening's *Statutes*, vol. i., p. 433.

<sup>5</sup> Colonial Entry Book, Acts of Ass., 1674-5, p. 70.

who, at this time, was serving on the grand jury, presented at a session of the county court Thomas Wells and his wife for swearing "in a horrible nature"; and on the same occasion, Major Thomas Chamberlaine was indicted for the like offense.<sup>1</sup> Thomas Wells seems to have been inveterate in his indulgence in profanity; "I came to his house," Edward Stratton testified in 1686, "and I heard him singing with his servant wench and Indian boys and swearing several bitter oaths. I thought there had been several drunken men. And he and his wife doe make a common custom of swearing and cursing on the Sabbath day."<sup>2</sup> The only presentments entered by one grand jurymen in Isle of Wight at a term of the county court held in 1688, was one against one person for "swearing God's wounds," and one against another for "swearing God's blood."<sup>3</sup> A few years afterwards, there were, at a single term of the Henrico county court, as many as ninety presentments for profane oaths; and in some of these cases, the same person was indicted at least three times for the like offence; among those included in the list of the guilty were men of such prominence in the Colony as William Randolph and Stephen Cocke, which proves that no favor was shown to any one, however powerful or influential, by the grand jury in their effort to put an end to the evil.<sup>4</sup>

Apparently, profanity was not so prevalent in some of the counties of the Northern Neck, for, in the course of one year, 1692, there were only two cases reported by the grand jury in Westmoreland.<sup>5</sup> The vice,

<sup>1</sup> Henrico County Records, vol. 1677-92, orig. p. 336.

<sup>2</sup> *Ibid.*, vol. 1677-92, orig. p. 371.

<sup>3</sup> Isle of Wight County Records, vol. 1688-1704, p. 58.

<sup>4</sup> Henrico County Records, vol. 1688-97, pp. 133-4, Va. State Libr.

<sup>5</sup> Westmoreland County Records, vol. 1690-98, pp. 66, 67.

however, seems to have been so generally indulged in in Virginia, in spite of the vigilance of vestries and grand juries, that, during this year, the Governor and Council gave directions that the law for the prevention and punishment of swearing and cursing should be read at least once every two months from the pulpit of each church and chapel-of-ease situated in the Colony.<sup>1</sup>

This action on the part of the highest authorities evidently stimulated the county and parish officers to extraordinary activity. In the course of the same year, one hundred and twenty-two persons were indicted in Henrico for uttering "wicked oaths"; and in the following year, sixty-eight; of whom John Huddlesey was accused of "oaths innumerable."<sup>2</sup> In 1692, forty persons were presented in Princess Anne at the March term of the county court for common swearing; and in 1695, fourteen.<sup>3</sup> In the course of 1694, thirty-nine persons were indicted in Henrico for profanity. One of these, Ann Stop, was charged with having been guilty of that vice at least sixty-five times.<sup>4</sup>

<sup>1</sup> British State Papers, B. T. Va., 1692, No. 123, Unassorted Papers.

<sup>2</sup> Henrico County Records, vol. 1688-97, pp. 321, 322, 407, Va. St. Libr.

<sup>3</sup> Princess Anne County Order Book, 1691-1709, pp. 34, 78.

<sup>4</sup> Henrico County Records, vol. 1688-97, p. 536. Ann Stop was, at a later date, appointed administratrix of her husband's estate.

## CHAPTER V

### Public Morals : Bastardy and Slander

ONE of the most common offences against morality committed in the lower ranks of life in Virginia during the Seventeenth century was bastardy, the explanation of which fact is to be found in the number of women, who, in search of employment as agricultural and domestic servants, came over either free, or bound under articles of indenture drawn before the ship transporting them had left the shores of England. These women, as a rule, had belonged to the lowest class in their native country, and not all of them had received lessons such as to imbue them with the strictest principles of virtue. After their arrival in Virginia, their contracts rendered it difficult for them to marry. Having paid a very high price for their labor, their masters, not unnaturally, were opposed to their entering a relation which was quite certain to lead to interruptions in their field work, perhaps, at the very time their taking part in that work would be most valuable, if not wholly indispensable. Not only would the birth of children make it necessary for them to lie by for a month or more, but it might even result in their deaths, and the complete loss of the money invested by the planter in their purchase. Independently of these considerations, many of this class of women were exposed to improper

advances on their masters' part as they were, by their situation, very much in the power of these masters, who, if inclined to licentiousness, would not be slow to use it. In the corn and tobacco fields, and in the barns, the female agricultural servants of English birth were also thrown into a very close and promiscuous association with the lowest class of men to be found in the Colony, and the opportunities thus constantly arising, no doubt, led to frequent immoralities; and the same was true of the social intercourse after hours of labor for the day were over; and also during the various holidays, including Sunday, which the servants and slaves enjoyed. The fact also that most of these women in emigrating from their native country had left all of their kins-people and early social ties behind must have had an important influence in weakening that sense of responsibility for their own conduct, which might have resulted in more self-control.

That servant women in Virginia during the Seventeenth century gave birth to so many bastards was not due to any lack of strictness on the part of the authorities in enforcing the laws designed to discourage this form of immorality. At a very early period, punishment was inflicted for incontinence even though the guilty parties had afterwards married, and their child had been born in wedlock.<sup>1</sup> Anthony Delamasse and Jane Butterfield, having been arrested in Lower Norfolk county, in 1642, for living unlawfully together, received each a round of thirty lashes; and they were thereafter kept separate until they had been legally united. John Smith, also of Lower Norfolk, was, for

<sup>1</sup> See Lower Norfolk County Records, Orders June 4, 1640. Nine such cases were presented in Lower Norfolk at the December term, 1654; see Records, vol. 1651-56, p. 114.

the same offence, compelled to contribute one hundred and fifty pounds of tobacco towards the erection of a pair of stocks in front of the court-house. During this year, a woman was convicted in the same county of having borne two bastards.<sup>1</sup> John Pope, of Accomac, who had been summoned for improper intimacy with a woman, was tried and sentenced to build a ferry boat for the transportation of people across Plantation creek; and should he fail to do so, he was to receive forty lashes on his bare back, and on the following Sunday acknowledge his fault in the parish church in face of the congregation.<sup>2</sup>

In a case of bastardy occurring in Accomac about this time, the father was required by the county court to go before the congregation of his parish church and confess his sin, whilst the mother was sentenced to be whipped until thirty lashes had been laid on her bare back.<sup>3</sup> Edith Tooker, of Lower Norfolk, having been found guilty of the same offence, was ordered by the justices to appear in her parish church at the hour of divine service. Clothed in a white sheet, she was led in after the worshippers had taken their seats; the clergyman began at once to urge her to repent of the "foul sin" she had committed; but she, turning a deaf ear to his admonitions, "did, like a most obstinate and graceless person, cut and mangle the sheet wherein she did penance." She was for this act condemned to receive twenty lashes, and commanded to appear again in a white sheet in the same church, on the following

<sup>1</sup> Lower Norfolk County Records, Orders Febr'y. 15, March 18, 1642.

<sup>2</sup> Accomac County Records, vol. 1632-40, p. 123, Va. St. Libr.

<sup>3</sup> *Ibid.*, vol. 1632-40, p. 120, Va. St. Libr.

A like case is found in Lower Norfolk County Records, Orders Oct. 15, 1645.

Sabbath fortnight.<sup>1</sup> During the same year, two other accused were, at the hour of divine service, required to take their stand, each on a stool placed in the middle aisle, where, in white sheets and holding white wands in their hands, they were forced to remain until the last hymn had been sung.<sup>2</sup>

A conviction for adultery in 1642 was followed by a sentence under which both parties to the crime were compelled to throw themselves on their knees in the ✓judges' presence and implore forgiveness; and at a later hour, each had to submit to a severe flogging.<sup>3</sup> Occasionally, at this time, the court, relenting under the influence of an expression of "heartly contrition and sorrow" on the woman's part, directed the punishment to be foregone<sup>4</sup>; but ~~generally, it was the man~~ who escaped the whipping. For instance, in 1649, in a case of ~~bastardy in~~ Lower Norfolk, the mother was condemned to receive fourteen lashes, and the father to pay the cost of building a bridge across one of the creeks situated in that county.<sup>5</sup> By an order of the justices of Northampton in 1648, an adulteress was ✓dragged through the water behind a boat passing between two previously designated points.<sup>6</sup>

After the middle of the century, the offence of bastardy became more frequent than ever owing to the ✓rapid increase in the number of female domestic and agricultural servants who were imported into the Colony. The records of all the counties show this.

<sup>1</sup> Lower Norfolk County Records, Orders Sept. 6, 1641.

<sup>2</sup> *Ibid.*, Orders April 12, 1641.

<sup>3</sup> *Ibid.*, Orders Aug. 15, 1642.

<sup>4</sup> A case in Lower Norfolk County Records, Orders Febry. 16, 1645.

<sup>5</sup> Lower Norfolk County Records, vol. 1645-51, p. 131.

<sup>6</sup> Northampton County Records, vol. 1645-51, pp. 148-9.

Of the indictments entered at the December term of the court of Lower Norfolk, in 1654, twelve were for incontinence, although in three fourths of these cases the children had been born in wedlock.<sup>1</sup> In the course of 1662, nine persons were indicted in York for the same offence<sup>2</sup>; and, in the following year, at a single session of court, fourteen in Accomac.<sup>3</sup> In the latter county, at one term of a later date, there were ten indictments for bastardy; and in 1666, eighteen in Northampton<sup>4</sup>; whilst, in 1684, the whole number of the like presentments in that county amounted to eight.<sup>5</sup> In this year, as in 1688, later on, the indictments were confined to this one form of immorality. In 1688, there were at least three servant women residing under Col. John Custis's roof who had given birth to illegitimate children.<sup>6</sup> Bastardy does not appear to have been a common offence in Henrico at this time, as, between 1682 and 1697, only about eleven cases were presented, and of the persons guilty at least two were women of the African race.<sup>7</sup> In November 1695, there seem to have been only two cases, and in June, only three presented in Essex county<sup>8</sup>;

<sup>1</sup> Lower Norfolk County Records, vol. 1651-56, p. 114.

<sup>2</sup> York County Records, vol. 1657-62, p. 418, Va. St. Libr.

<sup>3</sup> Accomac County Records, vol. 1663-66, p. 23.

<sup>4</sup> *Ibid.*, vol. 1666-70, p. 169; Northampton County Records, vol. 1664-74, folio p. 30. In 1677, nine cases of bastardy were presented by the church-wardens of Accomac; see vol. 1676-8, p. 48.

<sup>5</sup> Northampton County Records, vol. 1683-89, p. 53.

<sup>6</sup> *Ibid.*, vol. 1683-89, p. 377.

<sup>7</sup> Henrico County Minute Book for 1682-1701. Two incestuous marriages in this county were, in 1694, reported to the Governor by the clergymen; see Colonial Entry Book, vol. 1680-95, April 21, 1694.

<sup>8</sup> Essex County Records, vol. 1692-95, Orders Nov. 12, 1695.



and during the same year, only five were presented in Westmoreland.<sup>1</sup> In August, 1695, two women were indicted in Elizabeth City for sexual immorality; and in 1698, four.<sup>2</sup>

How serious had become the burden imposed upon the Colony by the maintenance of illegitimate children is shown by the petition offered in the House of Burgesses by Col. Lawrence Smith, of Gloucester county, in 1696, in which, after dwelling on "the excessive charge" that lay on the parishes "by means of bastards born of servant women," he asked that more stringent methods should be adopted in order to diminish the drain upon the tax payers' purses for their support; but the House, after considering the whole question, decided that the laws in force were sufficient to cover the whole ground of complaint<sup>3</sup>; and this, as we shall see later on when we come to treat of the Vestry's duties was a statement strictly accurate.

In addition to the different punishments inflicted for the various forms of incontinence which I have already touched upon, an Act was passed in 1657-8 depriving the person guilty, when of the male sex, of all right to deliver testimony in court, or to hold public office. The latter especially was a severe penalty in an age when there were few men of any importance in the community not anxious to fill some position in the administration of the Colony's affairs, local or general.<sup>4</sup>

The authorities, during the Seventeenth century, showed equal firmness and swiftness in punishing those guilty of slander and defamation of character,

<sup>1</sup> Westmoreland County Records, vol. 1690-98, pp. 66, 67.

<sup>2</sup> Elizabeth City County Records, Orders Aug. 19, 1695, July 18, 1698.

<sup>3</sup> Minutes of House of Burgesses. Sept. 28, 1696, B. T. Va., vol. lli.

<sup>4</sup> Henning's *Statutes*, vol. i., p. 433.

or of spreading false reports. In 1662, it was provided that any one setting afloat groundless rumours calculated to disturb the country's peace should pay a fine not to exceed two thousand pounds of tobacco, and be required to give bond for his good behaviour.<sup>1</sup> A wife convicted of slander was to be carried to the ducking stool to be ducked unless her husband would consent to pay the fine imposed by law for the offence.<sup>2</sup> There were other forms of punishment for it; in 1634, for instance, a woman who had defamed another to her face by applying to her one of the most opprobrious of terms, was compelled to beg forgiveness of the injured person at church in the interval between the first and second lessons, and to ask the congregation to pray for her, the guilty one, in order "that God might forgive her great sin."<sup>3</sup> Deborah Glasscock, of Lower Norfolk, having, in 1638, without any ground, brought an outrageous charge against Capt. John Sibsey, was sentenced to receive one hundred stripes on her bare shoulders and to implore his pardon, first, in court in the justices' presence and afterwards in the parish church during divine service.<sup>4</sup> Two years later, Mrs. Thomas Causon raised a cloud of scandal against Colonel Adam Thoroughgood's memory by publicly declaring that he had "paid slowly or paid not at all"; complaint having been lodged against her by his widow, she was arrested and ordered by court to beg Mrs. Thoroughgood's pardon on her knees in the court room; and also in the parish church of Lynnhaven after the first lesson of the morning prayer.<sup>5</sup>

Sometimes, after asking forgiveness of the victim of

<sup>1</sup> Hening's *Statutes*, vol. ii., p. 109.

<sup>2</sup> *Ibid.*, vol. ii., p. 166.

<sup>3</sup> Accomac County Records, vol. 1632-40, p. 22, Va. St. Libr.

<sup>4</sup> Lower Norfolk County Records, Orders April, 2, 1638.

<sup>5</sup> *Ibid.*, Orders Aug. 3, 1640.

the slander, the author was compelled to submit to a severe flogging. A case occurred in Lower Norfolk in 1646, in which the guilty person, having first received fifteen lashes on his bare back, was sentenced to wear in court a paper on his head inscribed with the name of the person wronged; and this paper was also required to be worn in the parish church during divine service; and also at a public meeting, to be held at Elizabeth River.<sup>1</sup> Some years later, a woman, residing in Northampton, was punished for defamation by being condemned to stand at the door of her parish church, during the singing of the psalm, with a gag in her mouth.<sup>2</sup> Deborah Heighram, of Lower Norfolk, was, in 1654, not only required to ask pardon of the person she had slandered, but was mulcted to the extent of two thousand pounds of tobacco. Alice Spencer, for the same offence, was ordered to go to Mrs. Frances Yeardley's house and beg forgiveness of her; whilst Edward Hall, who had also slandered Mrs. Yeardley, was compelled to pay five thousand pounds of tobacco for the county's use and to acknowledge in court that he had spoken falsely. Hall, it appeared, belonged to the social rank of a gentleman, and for this reason, the sentence was not accompanied by ignominious circumstances.<sup>3</sup> When Francis Manning complained to the justices of this county that his wife and himself were often "upbraided by their neighbours with scandalous speeches," the court publicly announced that, should the offence be repeated, those guilty of it should suffer corporal punishment.<sup>4</sup>

<sup>1</sup> Lower Norfolk County Records, vol. 1646-5, p. 15. Capt. Thomas Willoughby was the person slandered.

<sup>2</sup> Northampton County Records, vol. 1651-54, p. 170.

<sup>3</sup> Lower Norfolk County Records, vol. 1651-56, pp. 83, 84, 97.

<sup>4</sup> *Ibid.*, vol. 1656-66, p. 82.

It will be seen, from the various instances given relating to the profanation of Sunday, drunkenness, swearing, defamation, and sexual immorality, that, not only were the grand juries and vestries extremely vigilant in reporting these offences, but the courts were equally prompt in inflicting punishments; and that the penalty ranged from a heavy fine to a shameful exposure in the stocks or the parish church, and from such an exposure to a very severe flogging at the county whipping post. There are many indications that the justices, if they erred at all, erred on the side of severity rather than of leniency. When we consider on the one hand, the size of the Colony's population, and, on the other, the comparatively small number of prosecutions for offences of this character, in spite of the extraordinary watchfulness of the authorities, an impression is created that the communities of Virginia, during the Seventeenth century, were proportionately far more exempt from these forms of viciousness than contemporary England itself. This impression is confirmed by the direct testimony on this point of one of the most intelligent observers who visited the Colony in these early times. ✓

The country is full of sober, modest persons [wrote the author of *Leah and Rachel*], and many that fear God and follow that perfect rule of our Blessed Saviour to do as they would be done by; and of such a happy inclination is the country that many who, in England, have been lewd and idle, there, in imitation of the industry they find there, not only grow ashamed of their former courses, but abhor to hear of them, and in small time wipe off those stains they have been formerly tainted with; if any be known either to profane the Lord's Day or his name, or be found drunken, commit whoredom, scandalize or disturb his neighbour, or

give offence to the world by living suspiciously in any bad course,—there are for each of these severe and wholesome laws and remedies made and put into execution. I can confidently affirm that since my being in England, which is not yet four months, I have been an eye and ear witness of more deceits and villainies (and such as modesty forbids me to utter) than I either ever saw or heard mention made in Virginia in my one and twenty years abroad in those partes.<sup>1</sup>

<sup>1</sup> Hammond in *Leah and Rachel*, p. 16, Force's *Hist. Tracts*, vol. iii.

## CHAPTER VI

### The Parish: How Formed

THE parish was the local unit for the administration of the religious affairs and the promotion of the moral health of the community. As one of the ordinary local divisions of England, it was established in Virginia at an early date; such a division existed in the Colony certainly in 1623, for, in the course of that year, it was provided by an Act of Assembly that a public granary should be erected "in every parish" to secure the people against the pangs of a general famine.<sup>1</sup>

Now, as at a somewhat later period, the determination of the boundaries of a new parish had, no doubt, to be finally approved by the General Assembly itself<sup>2</sup>; in 1642, we find this body instructing the justices of Isle of Wight to divide the county into two parishes along such topographical lines as popular convenience demanded; and when the limits of each had been carefully defined, to make a full report to the General

<sup>1</sup> Hening's *Statutes*, vol. i., p. 128. When the country was laid off into shires in 1634, each shire was divided into parishes, and also into precincts or boroughs for the constables; see Hening's *Statutes*, vol. i., p. 224. This probably signified merely a readjustment of the area of the existing parishes.

<sup>2</sup> Robinson Transcripts, pp. 226, 230. In 1639, Cheskiack and Lawne's Creek parishes were laid off by order of the General Assembly.

Assembly for confirmation.<sup>1</sup> And in the course of the next year, this body, which had directed that the new county of Northampton should be laid off into two parishes, formally approved the determining lines adopted by the county court.<sup>2</sup>

This method of establishing a new parish was suggested by practical wisdom; in laying off the boundaries of such a parish, the questions to be considered embraced, not only the country's configuration, such as the presence of large streams and wide tidal creeks, but also the extent to which the population was either concentrated or dispersed. Only persons residing within the limits of the proposed parish were thoroughly informed as to either, and in leaving the determination of boundaries to them, most frequently perhaps as represented by the bench of county justices, the General Assembly followed a course that assured the division most promotive of public convenience.

The parishes about 1643 spread over such a wide area of ground as to give rise to complaints that the services in the churches were neglected, and that the number of persons present at them was steadily declining. In reality, it was not possible for a large proportion of the parishioners to attend owing to the gréat distance to be traversed, or wide streams or inlets, often swept by storms, to be crossed.<sup>3</sup> In order to create a remedy for these physical disadvantages, the policy of dividing all the large parishes was systematically carried out in every case in which the size

<sup>1</sup> Hening's *Statutes*, vol. i., p. 279.

<sup>2</sup> *Ibid.*, vol. i., p. 249. The name "Northampton" was substituted for "Accomac." Later on, Northampton county was divided, and its upper part was designated as "Accomac County."

<sup>3</sup> *Ibid.*, vol. i., pp. 251, 347.

of the population justified it. In 1643, three parishes were, with the approval of the General Assembly, erected in Upper Norfolk county,<sup>1</sup> and a few years later, the inhabitants of Upper Chippoak were permitted to lay off a new parish, provided that they paid the dues already assessed against them for the support of the clergyman residing at Jamestown, and the special tax imposed for "finishing and repairing" the church situated at that place.<sup>2</sup> When, during the early part of the Puritan Supremacy, New Kent became a county, the parish of Marston was established within its boundaries.<sup>3</sup> In the course of the same year, the county of Lancaster was divided into two parishes, the determination of whose respective lines seems to have been referred by the General Assembly to the popular voice, for it is stated that, by the justices' order, the inhabitants of all the country lying within the area of the proposed new parishes were summoned to meet at a designated place, there to agree upon boundaries that would be convenient to each set of parishioners.<sup>4</sup> It was perhaps possible, in such a case, for a county court, of its own motion, to adopt certain lines of division as a purely tentative step, but to leave their acceptance to the popular vote. Whether the county should be laid off in parishes by the pole, or by number of acres, was generally decided by the people alone; and

<sup>1</sup> Acts of Assembly, 1643, MS., Clerk's office, Portsmouth, Va.

<sup>2</sup> Henning's *Statutes*, vol. i., p. 347.

<sup>3</sup> Randolph MS., vol. iii., p. 256.

<sup>4</sup> Lancaster County Records, vol. 1652-56, p. 152. About 1680, the inhabitants of Pamunkey Neck petitioned the General Assembly for authority to establish a separate parish. A part of the Neck had previously been embraced in St. Peter's parish. The petition was granted; Assembly Orders, 1680, Colonial Entry Book, vol. lxxxvi.



on their expressing a preference for a division by the pole, the county court would enter an order that this course should be followed.<sup>1</sup>

About 1656, the burden of providing for a minister was so heavy that the people inhabiting some of the newly formed counties were very dilatory in taking the steps necessary for the erection of new parishes; which led the General Assembly to pass an Act requiring that all such counties should be at once laid off in parishes; that the determining lines should be agreed upon by the majority of the population; and that these lines should be confirmed by the subsequent action of the county court.<sup>2</sup>

Occasionally, it was found that the union of two parishes into one would greatly promote the religious welfare of the people, as well as reduce public expenses. Under these circumstances, the appeal for a change was, about the middle of the century addressed to the House of Burgesses, which, during the whole period of the Commonwealth, possessed the controlling voice in every branch of public affairs; for instance, in 1656, the inhabitants of Nutmeg Quarter begged that body to merge them in Denbigh parish as being contiguous; and the General Assembly, promptly acting upon their prayer, sent an order to the court of the county in which Denbigh parish was situated, to submit the question of consolidation to the popular voice; and should the majority be favorable to that course, to carry it out.<sup>3</sup>

At a later period in the century, the appeal for throwing two parishes into one seems to have been

<sup>1</sup> Lancaster County Records, vol. 1656-66, p. 56.

<sup>2</sup> Hening's *Statutes*, vol. i., p. 469.

<sup>3</sup> Acts of Assembly, 1656, Randolph MS., vol. iii., p. 269.

made to the Governor and Council; thus, in 1691, Major John Robins and Mr. Thomas Harmanson, Burgesses from Northampton, petitioned those officials sitting in their ecclesiastical capacity, to make one parish of the two situated in that county; they based their prayer upon the ground that each of the two parishes was too small separately to support a clergyman in comfort and keep the church in repair, but that joined together, their combined inhabitants could afford to pay a high salary to the one minister who would serve for both, and preserve the single parish church in a sound condition. The Governor and Council seem to have thought that the request fully reflected the popular wish, for, apparently without ordering a general vote, which would have shown this beyond doubt, they gave directions for the two parishes to be consolidated, to be known thereafter as Hungar's parish.<sup>1</sup> A few years afterwards, the inhabitants of Sittingbourne parish dwelling on the southern side of the Rappahannock appealed to the Governor and Council to require a division of that parish, but this body declined to allow the step proposed to be taken unless the petitioners should agree to unite with the nearest parish situated on the same side of the river.<sup>2</sup>

Sometimes a parish that had once been fully organized sank, for a time at least, if not permanently, out of practical existence. There were generally several causes for this; such a cause was the presence of a soil that proved, after a short or long period of cultivation, incapable of further production on a scale sufficient to support a considerable number of people. A second

<sup>1</sup> Northampton County Records, vol. 1689-98, pp. 117-118.

<sup>2</sup> Orders, June 14, 1694, Colonial Entry Book, vol. 1680-95.

cause was extreme unhealthiness arising from the existence of a great area of swamp land, which spread abroad over the entire face of the surrounding country an invisible but deadly cloud of miasma. And, finally, a parish situated on the irregular line of frontier was not infrequently depopulated for many years during the course of an Indian War by fear of those savage warriors, who, brandishing the tomahawk in one hand and the torch in the other, carried ruin and death into every dwelling-house in their path not yet emptied of its inmates.<sup>1</sup> As soon as one of these periodical conflicts came to an end by the destruction of the Indian foe, or the signing of a treaty of peace, the white people not only returned to their former homes, but also began to hew down right and left the trees of the forest growing beyond the old settlements; parishes, which it had previously been unsafe to inhabit owing to their remoteness, came in time to be situated far within the chain of outer plantations, and the continuity of their organization was never again interrupted by apprehension of Indian invasion.

It was estimated that the number of parishes in Virginia in 1661 did not exceed fifty; nearly half a century later, in consequence of a disposition to consolidate existing parishes with a view to diminishing public expenses, the number had fallen off to forty nine.<sup>2</sup> As a rule, each parish fronted on a stream for a great distance up and down, but its boundary lines perpendicular to the stream ran back into the country only a few miles. The parish took this shape from its conformity to the situation of the group of plantations embraced in its area. Not infrequently, it was divided into enor-

<sup>1</sup> British Colonial Papers, vol. li., No. 101.

<sup>2</sup> Campbell's *History of Virginia*, p. 371.

mous halves by a wide river or broad inlet of the Bay.<sup>1</sup> The presence of such a body of water, which had to be crossed by any one travelling to the parish church, should he happen to reside on the opposite side, had a tendency to diminish the parish's prosperity, and so soon as the size of the population justified it, a division, as we have already pointed out, always took place.

Every parish was laid off into precincts. This was done by the vestry, who were authorized by an Act of Assembly to create as many such divisions as the needs of their parish seemed to demand.<sup>2</sup>

<sup>1</sup> *Virginia's Cure*, p. 4, Force's *Historical Tracts*, vol. iii.

<sup>2</sup> Henrico County Records, Orders March 1, 1699.

## CHAPTER VII

### Parish Government: The Vestry

THE administration of the affairs of each parish was in the control of a local body known in Virginia, as in England, as the Vestry. Each of the vestries was composed of the foremost men residing in the parish represented by it, whether from the point of view of intelligence, wealth, or social position. To the power derived from an office of acknowledged authority, there was added the great personal weight given by large possessions, force of character and intellect, and the very best education which England or Virginia afforded. It is rare to note in the county records the name of a vestry-man who, in signing documents, was only able to make his mark.<sup>1</sup> Many vestry-men enjoyed the further distinction of being members of the county court, the House of Burgesses, or the Executive Council. It does not seem strange to discover that even so powerful an individual as the Governor himself was generally at great pains to be conciliatory in his bearing towards the vestries, not only because they had practical control of their communities, and, through their representatives, of the colonial

<sup>1</sup> Apparently, Robert Todd and John Clarkson, of York parish, in 1647, were unable to write, but this does not follow positively from their making their marks, as they may have been physically disabled; see York County Records, vol. 1638-48, p. 275, Va. St. Libr.

Assembly, but also because their family connections in England were often able to affect favourably or unfavourably his standing with the persons to whom he owed his appointment, and upon whose good will his continuance in office depended.

In the long run, the vestries proved themselves to be, of all the public bodies in the Colony, the most tenacious of their right of independent action, and in their contentions with Governor, Commissary, and clergy invariably turned up the victorious party. Thoroughly understanding the local interests of their parishes, they showed, as a rule, a determination to support these interests, whether or not their conduct was opposed to immemorial English customs, or brought them in direct conflict with the most influential personages of the Colony. In the firmness and persistency with which they, on so many occasions, refused to be guided by anything but what was called for by the welfare of their community, they revealed themselves as the earliest defenders to spring up in Virginia of the principle of local administration free from all outside interference. Chosen by the people, they were truly the representatives of the people within the sphere to which their jurisdiction was confined; and the example set by them had a powerful influence in nourishing the popular form of government.<sup>1</sup>

Even more controlling was the influence which the vestrymen exercised from a social point of view. As the first gentlemen in the county, apart from the prestige they derived from being the principal guardians

<sup>1</sup> It was only during the last years of Berkeley's administration, when the influence of the reaction first set in motion in England under the restored Stuart dynasty seemed to overwhelm so many land-marks of freedom, that the vestries showed themselves to be out of sympathy with popular feeling.

of public morals, they were looked up to as the models of all that was most polished and cultured in their respective parishes. It was one of the happiest features of that early society that each community possessed in its vestry a body of men prompted as well by every instinct of birth, education, and fortune, as by every dictate of their official duty, to set the people at large a good example in their personal deportment and in their general conduct. To their influence is directly traceable a very large proportion of what was most elevated and attractive in the social life of the Seventeenth century; and to that influence, we are, in no small degree, indebted for the character of the distinguished men of Virginia who cast such renown over the great era of the Revolution.

Broadly speaking, the vestry's jurisdiction extended to the repression of all forms of immorality, the care of the indigent, and the administration of the affairs of the Church. In church government, as we shall see later on, the vestry's power, during certain periods of the Seventeenth century, ran very much ahead of the power of the same body in England, but, in a general way, it may be said that their respective jurisdictions covered nearly the same ground. Before entering into a detailed description of the various duties performed by the vestry in Virginia, it will be necessary to inquire as to the manner in which the members were chosen.

The earliest reference to the existence of a vestry in the Colony is to be found, perhaps, in the statement contained in a letter of Sir Thomas Dale to a clergyman in London, that, during his administration, the affairs of the Church were conducted by "the minister and four of the most religious men."<sup>1</sup> Whether these men

<sup>1</sup> See Hamor's *Discourse* for Dale's Letter.

were known by the name of vestry or not, they exercised substantially all the powers ordinarily incident to that body. They were, perhaps, not the first to be chosen for this purpose, but from the date of their selection, there is little room for doubt, there was always a small band of persons picked out of the congregation to aid the clergyman in carrying on the business, and in advancing the general welfare, first of the church at Jamestown, and, afterwards, of each additional church as soon as it was erected. There was no custom prevailing in England more likely to have been followed in the Colony than this simply because it had a pressing motive in practical necessity. In a community in which, under the operation of the plantation system, the inhabitants were very much dispersed, it required constant vigilance to hold each congregation together; and this could only be effectively shown by an organisation like the vestry, whose first duty it was to maintain the prosperity of their particular church. It is not surprising to find in the earliest of the surviving county records frequent references to the existence of vestries. Certainly by 1635 the name was in common use in Virginia to signify a body of men who had control of the church affairs of their parish.<sup>1</sup>

Who appointed the members of the vestry? During the period that immediately followed the coming together of the first Assembly in 1619, this seems to have been done by the monthly court, certainly at times.<sup>2</sup>

<sup>1</sup> See Accomac County Records, Orders Sept. 14, 1635. An order of the county court of Lower Norfolk, adopted May 2, 1641, is expressed in such a manner as to justify the inference that the vestry of Sewell's Point church had been established previous to 1640. We find a reference to a vestry of that date in Robinson Transcripts, p. 14.

<sup>2</sup> *Ibid.*, Orders Sept. 14, 1635.



By 1641, the parishioners alone appear to have exercised this power, for in the course of that year, the General Court instructed the clergyman in charge of the church at Jamestown to issue a general notice to the inhabitants of the county that a meeting of all the people would be held at that place on a specified date to choose a vestry.<sup>1</sup> This manner of selecting was, in 1644, confirmed by an Act of Assembly, which provided that the choice should be determined by a majority of voices; and the same Act required that ample notice should be given by the clergyman and churchwardens to enable all the parishioners to be present on the appointed day.<sup>2</sup> The utmost care was to be taken that only men thoroughly fitted by ability, character, and estate to fill so responsible a position should be named.<sup>3</sup> In 1666, the court of Accomac ordered the reader of the parish church situated in that county to announce several Sundays in succession that the parishioners were expected to meet on a designated date at Mr. Thomas Fowke's house, and there choose the members of the new vestry.<sup>4</sup> We find the same court in 1670 confirming the election of vestrymen, recording their names and administering to them the oaths of allegiance and supremacy.<sup>5</sup>

By the provisions of an Act passed by what was known as Bacon's Assembly, vestrymen were to be chosen in mass at least once in the course of every three years; and they were always to belong to the rank of freeholders.<sup>6</sup> This body had, by this time, grasped extra-

<sup>1</sup> General Court orders, Robinson Transcripts, p. 235.

<sup>2</sup> Hening's *Statutes*, vol. i., p. 291.    <sup>3</sup> *Ibid.*, vol. i., pp. 240-1.

<sup>4</sup> Accomac County Records, vol. 1666-70, folio p. 14.

<sup>5</sup> *Ibid.*, vol. 1671-3, p. 174; Hening's *Statutes*, vol. ii., p. 25.

<sup>6</sup> Hening's *Statutes*, vol. ii., p. 356.

ordinary power, and the requirement that all the members should be reelected together at definite intervals was designed to lessen this power by making the vestry more dependent on the people. Each vestry had assumed the right to fill all vacancies at its board by a vote of its own members apparently without submitting at intervals to a reelection of the whole body by the popular voice, and had thus become self-perpetuating. In the long list of grievances presented by nearly all the counties to the Commissioners who were settling the disturbed affairs of the Colony after the failure of the Insurrection of 1676, one of the most vigorously expressed was that condemning this encroachment upon the parishioners' rights and earnestly praying that it should be corrected. The complaint of Isle of Wight went so far as to request that, not only should all the members of every vestry be elected once every thirty-six months, but also that no member of the preceding vestry should be eligible for reelection when the next choice had to be made.<sup>1</sup> This proposition was impracticable, but it shows to what an extraordinary point the abuses prevailing during the last year of Berkeley's administration had been pushed in every branch of the Government, local as well as central. At a time when the General Assembly persisted in sitting for half a generation without a single general election, and exhibited in all their proceedings the arbitrary spirit caught from the reactionary rulers of the Mother Country, it was to be expected that local bodies like the vestries, largely composed as they were of the same men, would display a similar determination to trample upon regulations, which, by requiring their repeated reelection as a body, made them dependent on popular favor.

<sup>1</sup> Winder Papers, vol. ii., p. 183.

The power of self-perpetuation without popular election at intervals, to which apparently they had no real claim, at this time, either in law or custom, seems to have passed from the vestries with the colony's pacification. As early as 1684, we find the county court of Rappahannock designating the twenty-second day of November as the date for the "free election" of the members of the vestry of North Farnham parish. The people were directed to assemble for that purpose at the parish church, there to choose one half of the members from the upper parts of the parish, and the other half from the lower. This was the only restriction upon the right of selection by the popular voice.<sup>1</sup> In accordance with this mandate of the county court, the inhabitants of the parish met at the appointed place, elected the members of the vestry, and returned their names to the justices at their next session; not so much, it appears, to be approved, as to be entered among the permanent records. The court promptly empowered the new vestry to lay the parish levies.<sup>2</sup>

Should no election take place at the first popular meeting, the county court proclaimed a date for a second one. In 1692, the justices of Rappahannock appointed a day for the inhabitants of North Farnham parish to assemble, but when the day ended no vestry had been chosen. This fact was reported to the court, which proceeded to appoint a second date for the election; but, in the meanwhile, it directed that this order should be read in the parish church on two successive Sundays. In anticipation of a choice being made, Capt. William Barber, Capt. Alexander Swann, and Mr. Thomas Glasscock were named by the justices

<sup>1</sup> Rappahannock County Records, Orders Nov. 7, 1684.

<sup>2</sup> *Ibid.*, Orders Dec. 21, 1685.

to administer to the new vestrymen the oaths of allegiance and supremacy, as well as the oath to execute properly all the duties of their office.<sup>1</sup>

After the county of Richmond was formed from Rappahannock, dissatisfaction arose because its court had removed the persons chosen from that part of Rappahannock, before its division, to represent it in the vestry of North Farnham parish, and had then ordered the election of new vestrymen. The Governor and Council, to whom this complaint was made as the final arbiters in all ecclesiastical disputes, instructed the justices of Richmond to return to the Secretary's office a full account of their proceedings respecting these new vestrymen, on which a judgment might be based; and this command was at once complied with by the members of the court.<sup>2</sup>

Sometimes, the original order for the election of a new vestry came from the Governor and Council, but perhaps only after some controversy had been settled by these officials sitting as an ecclesiastical court; for instance, in 1691, we find the Lieut.-Governor and the Council instructing the county court of Northampton to appoint a day for the people of the parish to meet and choose a vestry. Only a small number of persons assembled, and it was decided to defer the election to a later date; when that date arrived, the new vestry was chosen "by subscription of the major part of the inhabitants" of the county who were present.<sup>3</sup>

The county court was impowered to order the election of a new vestry should this be shown to be advisable.

<sup>1</sup> Richmond County Records, Orders July 2, 1692.

<sup>2</sup> The complainants were Capt. William Taylor, John Lloyd, and John Taverner; see Orders April 29, 1693, Colonial Entry Book, 1680-95. See also Richmond County Records, Orders July 14, 1693.

<sup>3</sup> Northampton County Records, vol. 1689-98, p. 117.

In 1697, a petition was presented to the justices of Elizabeth City by William Mallory and John Sheppard, in which they prayed for such an election; the justices were equally divided in opinion, and the petition for that reason alone seems to have failed.<sup>1</sup>

At the end of the century, the vestries were chosen by the suffrage of the freeholders and householders; but in the intervals between the elections of the entire body by a popular vote, the vestrymen had power to fill any vacancy in their board caused by death, resignation, or removal from the parish; and this power they had, no doubt, always enjoyed, as it was called for as well by the necessities of parochial business as by the convenience of heads of families, who could hardly have been summoned for a new election every time such a vacancy occurred.<sup>2</sup>

It is probable that, from a very early date, the number of persons composing a vestry was limited to twelve; by an Act passed in 1660, it was expressly declared that the membership should not exceed this number<sup>3</sup>; and such continued to be the law until the close of the Seventeenth century.<sup>4</sup> The meetings of the vestry were held at least twice in the course of each year; and the minutes of their proceedings were very frequently incorporated with those of the proceedings of the county court.<sup>5</sup> Very often, the members of a

<sup>1</sup> Elizabeth City County Records, Orders Nov. 18, 1697.

<sup>2</sup> Present State of Virginia, 1697-8, Section xi.; Beverley's *History of Virginia*, p. 211. For vestry's power to fill vacancies as early as 1648, see Lower Norfolk County Orders Aug. 10, 1648; Lower Norfolk County Antiquary, vol. ii., p. 15.

<sup>3</sup> Hening's *Statutes*, vol. ii., p. 25.

<sup>4</sup> Present State of Virginia, 1697-8, Section xi.

<sup>5</sup> For instances, see Lower Norfolk County Antiquary, vol. ii., p. 15.

vestry came together in obedience to a special order issued by that court; for example, in 1662, the sheriff of Northampton received instructions from the justices to summon the "gentlemen of the vestry to meet at ye towne church on the following Monday at eleven o'clock"<sup>1</sup>; and in the same year, the vestry of Lynnhaven parish, in Lower Norfolk, were directed by the court of that county to convene at their accustomed place of meeting on a designated day.<sup>2</sup> In cases of this kind, there was, no doubt, urgent business touching the parish's welfare which the justices thought ought to be attended to at once. In 1666, the vestrymen of the parish situated in Accomac were summoned to the next session of the county court with a view to following "ye order of public affairs"; this was probably to enable them to acquire a more intelligent understanding of the public needs before they undertook to make the bye-laws which they had been impowered to adopt.<sup>3</sup> The same year the members of the two vestries established in Lower Norfolk were directed by the county court to hold a meeting at the court-house for the same purpose<sup>4</sup>; and during 1671, they were again summoned to the same place in order that they might consult with the justices "about several businesses concerning ye welfare of the county."<sup>5</sup> These "businesses" doubtlessly related particularly to matters in which the purely moral health of the community was more or less involved. The regular session of the vestry seems to have been ordinarily

<sup>1</sup> Northampton County Records, vol. 1657-1664, folio p. 167.

<sup>2</sup> Lower Norfolk County Records, vol. 1656-66, p. 344<sup>2</sup>.

<sup>3</sup> Accomac County Records, vol. 1666-70, folio p. 15.

<sup>4</sup> Lower Norfolk County Records, vol. 1666-75, p. 4<sup>1</sup>.

<sup>5</sup> *Ibid.*, vol. 1666-75, p. 63<sup>2</sup>.

held at the home of one of its members; perhaps at the home of each member in turn; but it was also very frequently held (more probably in the summer) in the parish church.<sup>1</sup>

<sup>1</sup> "Deposition of Thomas Moundfort saith that ye very day Mr. Benjamin Read, late of this County, did die, there happened to be a vestry appointed at York Church and your deponent going there etc"; York County Records, vol. 1690-4, p. 255; see also Orders May 2, 1641, Lower Norfolk County Records. The following entry has many resembling it in the county records: "A meeting of Vestry of Elizabeth River Parish called to meet at the house of Lawrence Phillips, &c"; 1648, Lower Norfolk County Records, vol. 1646-51, p. 82.

## CHAPTER VIII

### Parish Government: Duties of Vestry

**W**HAT were the duties performed by the vestry? The first great duty of the vestry as a body seems to have been to appoint the clergyman of their parish. To this, reference will be made at length at a later stage in our inquiry. Their second appears to have partaken somewhat of a judicial character, as it involved an investigation into those cases of drunkenness, adultery, and the like moral offences which they were authorized to present, if well grounded, through the churchwardens to the county court for final prosecution. In an entry appearing in the Northampton records for 1648, there is found a long list of depositions taken originally at a meeting of the vestry called together to consider the question of the innocence or guilt of a prominent citizen's wife who was accused of infidelity to her husband. The verdict was unfavorable to her, and she was presented to the county court by the minister and churchwardens of the parish acting under instructions from the vestry; the depositions taken before the latter body were read in court; and the woman was a second time convicted, but now for the first time sentenced.<sup>1</sup> In a trial of a case of this kind, whether initially before the vestry, or finally before the justices, the churchwardens seem

<sup>1</sup> Northampton County Records, orig. vol. 1645-51, pp. 148-9.



to have acted the part of prosecutors. There is no evidence in the county records to show that every case of a grave moral offence presented by these officers to the county court was preceded by a formal inquiry before the vestry, as in the case occurring in Northampton, but it is probable that such an inquiry was sometimes held when there was any very serious ground for doubt; in undertaking it, the vestry would have been simply following, within their own jurisdiction, the example set by the grand jury in investigating the circumstances of a case to see whether there was a sufficient basis for an indictment.<sup>1</sup>

The third great function performed by the vestry as a body was to lay the parish levy. As early as 1640, there is found in the records of Lower Norfolk an order of court commanding the inhabitants of the county to obey an order of the vestry of Lynnhaven parish, requiring each person to bring to certain designated places three bushels of corn to be used in meeting the expenses of that parish. The tax was paid in such a dilatory way that the justices had been compelled to intervene to enforce a strict performance of the obligation.<sup>2</sup> In 1641, it was provided by an Act of Assembly that a vestry should be appointed in every parish of the Colony for the express purpose of laying levies and making assessments with a view to raising the funds needed to pay the ministers' salaries, to repair the church edifices, and to cover all other parochial charges as they arose.<sup>3</sup> In the following year, these funds were increased by the addition to them of all the fines

<sup>1</sup> See hereafter in Chapters on Legal Administration an account of the Parish Court in Henrico county.

<sup>2</sup> Lower Norfolk County Records, Orders Aug. 3, 1640.

<sup>3</sup> *Va. Maga. of Hist. and Biog.*, vol. ix., p. 53.

collected as a penalty for swearing.<sup>1</sup> The vestries, in the course of 1658, were empowered to settle, according to the conclusions of their own judgment, all matters relating to their parishes and parishioners, and this included the independent exercise of their own discretion in apportioning the levies.<sup>2</sup> An act passed in 1662 again confirmed their right to do this,—they were again authorized specifically to collect taxes for building and repairing the churches and chapels-of ease, for maintaining the minister, for buying and improving glebes, for paying salaries to readers, clerks and sextons, and for such "other necessary duties for the orderly managing of all parochial affairs."<sup>3</sup>

The vestry usually met in October to lay the levy, as, by the time that month had rolled around, the tobacco crop, having been housed and cured, was in a condition to be exported. A list of all the expenses incurred for parochial objects was made, and their sum increased by the percentage allowed for collection; the whole, which was always calculated in pounds of tobacco, was then divided by the number of tithables

<sup>1</sup> Accomac County Records, vol. 1640-5, p. 169, Va. St. Libr. "It is ordered by this Court that Mr. John Wilkins shall be amerct. 30 lbs. of tobacco for swearing a blasphemous oath in the face of the Court, to be desposed of at the next vestry."

<sup>2</sup> Henning's *Statutes*, vol. i., p. 433.

<sup>3</sup> *Ibid.*, vol. ii., p. 45. The following is an example of the parish levy; it will be found in Northampton County Records, Orders Nov. 5, 1668:

To Mr. John Taylor 8,000 lbs.

To ye Churchwardens for nails, timber and carrying in ye timber of ye church 4.425 lbs.

To ye French Doctor for looking after Tom Spelman 400 lbs.

To ye French Doctor for curing ye woman's leg 700 lbs.

To Richard Smith 2,000 lbs.

To Mr. Clayton 6,000 lbs.

To Mr. Hutchings and other charges 4,200. lbs.

residing in the parish. In this way, the proportion which each had to pay was arrived at.

During the period when the vestries claimed the right of self-perpetuation, without any election by the people, a suspicion was spread that these bodies did not act with the strictest fairness and honesty in making the annual assessments; this led to the passage of an Act empowering the freeholders and housekeepers of each parish to choose six among their own number, distinguished for sobriety and discretion, to occupy seats at the vestry board, and to take part with its members in laying the parish taxes; and should the freeholders and housekeepers neglect to appoint such representatives, or the representatives themselves fail to be present at the meeting of the vestrymen, then the latter were authorized to proceed without them.<sup>1</sup> As this law was renewed by the General Assembly in the following year, it would appear that it had given satisfaction.<sup>2</sup> As soon, however, as the vestry assumed once more a popular character (which took place before many years had gone by), the need of these assistants must have passed away with the restoration of public control over that body, and the renewal of the voters' ability to change its membership, should they have good reason for doing so. There always remained the right of appeal to the General Assembly whenever the tax payers desired an immediate remedy against a parish levy considered by them to be oppressive; for instance, in 1699, the citizens of one of the parishes of Lower Norfolk laid a strong protest against their vestry's last assessment, before the Committee of Propositions and Grievances of the House of Burgesses,

<sup>1</sup> Hening's *Statutes*, vol. ii., p. 396.

<sup>2</sup> Colonial Entry Book, 1676-81, p. 161, Acts Febr'y. 20, 1677.

which immediately referred the petition back to the justices of that county, with instructions to make a careful inquiry as to whether the complaint was well grounded.<sup>1</sup>

In a large number of instances, the amount of the parish levy exceeded that of either the county or the public. The following relative proportions of the parish and county levies, drawn from the Elizabeth City county records for the last decade of the Seventeenth century, are fairly representative of the relative proportions of these levies throughout the Colony at this time:—in 1692, the parish levy amounted to 22.138 pounds of tobacco in a total of 36,096 pounds; in 1693 to 22.130 in a total of 56,606; in 1696, to 20.768 in a total of 50,292; in 1698, to 20,500 in a total of 29,019; and in 1690, to 43.832 in a total of 50,292.

In laying the levy, it was in the vestry's power to exempt any parishioner from taxation for parochial uses on the ground that he was disabled by age or some physical defect from working in the fields. Such action on this body's part seems to have led quite invariably to exemption from the county levy, provided that it was attested to by the clerk of the vestry; it was by this means that Robert Russell, of Henrico, who had been afforded relief from the parish levy in 1697 because of senility and impotency, obtained a like relief from the county levy; and the same privilege was allowed Hagar, a free Indian woman residing in Henrico also, on the score that she was a very sickly person.<sup>2</sup> In-

<sup>1</sup> Minutes of Assembly, May 10, 1699, B. T. Va., vol. lii. A report of the results of the inquiry had to be returned to the clerk of the House.

<sup>2</sup> Henrico County Records, Orders June 1, 1697, April 1, 1698. The attestation in both cases was made by the clerk of Bristol parish.

numerable cases of a similar character might be given.

When a dispute arose as to the extent of the vestry's local jurisdiction, the point was reserved for the decision of the county court. In 1660, there came up for settlement the question as to where the tithes of a family, all the members of which resided in one parish, but some of whom worked in another, should be paid; should the tithes of such a family be divided between the two parishes, or should they be turned over to the parish where the common dwelling house was situated? The dwelling house of Mrs. Elizabeth Jones stood in Hampton parish, but some of her tithables were engaged in planting in Middleton parish; but, it would seem, they nightly returned to her home. The court decided that Mrs. Jones must pay to the vestry of Hampton parish the whole amount of the parochial tax levied on her.<sup>1</sup>

<sup>1</sup> York County Records, vol. 1657-62, p. 262, Va. St. Libr.

## CHAPTER IX

### Parish Government: The Churchwardens

A LARGE part of the most important work performed by the vestries was performed by them, not as a body, but through their direct representatives, the churchwardens. The duties of these officers were carefully defined as early as 1619 in the Acts passed that year by the first Assembly to convene in Virginia, an evidence that, even at this date, such officers were appointed for the churches then in existence.<sup>1</sup> How were they chosen in these early years? It would appear that, in 1632, this was done at a public meeting.<sup>2</sup> By a law adopted in 1641, it was provided that two churchwardens should be annually selected in every parish, but without describing specifically the manner in which the choice should be made.<sup>3</sup> Six years afterwards, at a time when vestries had been long established in the Colony, we find the justices of Lower Norfolk "nominating and appointing" William Lucas and Francis Land to be churchwardens

<sup>1</sup> See Minutes of Assembly, 1619, p. 27, State Senate Doc., Extra, 1874. There are no references in the minutes of this Assembly to vestries. Mr. Edward Ingle in his admirable monograph *The Colonial Institutions of Virginia* suggests that the four assistants to the minister in the time of Dale were churchwardens.

<sup>2</sup> Ingle's *Colonial Institutions of Virginia*, p. 168.

<sup>3</sup> *Va. Maga. of Hist. and Biog.*, vol. ix., p. 53. Reenacted in 1642-3; see Henning's *Statutes*, pp. 240-1.

for Lynnhaven parish, and Roger Williamson to fill the same office in the other parish situated in the county.<sup>1</sup> Only two years later, it is stated that John Hill and William Crouch were, on October 2, "elected" churchwardens for the parish of Elizabeth River; and they were directed by the county court to attend its next term in order to take the oath of office. There seems no reason to doubt that, in this case, the choice was made by the vestry.<sup>2</sup> In 1652, two churchwardens were named in Northampton by the justices and "ye parishioners present" at the session of the court<sup>3</sup>; this constituted practically an election by popular voice; and it is probable that the same method was not infrequently employed throughout the period of the Puritan Supremacy in Virginia. If such was the method in force during this interval, an Act passed, after the Restoration, in the winter of 1661-2, put an end to it by requiring that two churchwardens should be chosen by the vestry of every parish,<sup>4</sup> and this continued to be the law down to the end of the century. The churchwardens were named once a year, and the members of the vestry served in rotation in order to share equally the burdens of the office.<sup>5</sup>

The oath which, during the Seventeenth century, the churchwarden was required to take throws much light on the various duties expected to be performed by any one holding this office.

<sup>1</sup> Lower Norfolk County Records, vol. 1646-51, p. 36; see also Lower Norfolk County Antiquary, vol. ii., p. 13. In 1644, the county courts were authorized to call churchwardens to account if they neglected their duty; see Henning's *Statutes*, vol. i., p. 291.

<sup>2</sup> See Lower Norfolk County Records, vol. 1646-51, p. 88; Lower Norfolk County Antiquary, vol. ii., p. 87.

<sup>3</sup> Northampton County Records, orig. vol. 1651-54, folio p. 86.

<sup>4</sup> Henning's *Statutes*, vol. ii., p. 45.

<sup>5</sup> Beverley's *History of Virginia*, p. 211.

By the terms of the oath used in 1632, it was incumbent upon the churchwarden to present all persons leading a profane and ungodly life, such, for instance, as common swearers, blasphemers, violators of the Sabbath, drunkards, fornicators, slanderers, and backbiters; all disturbers of the congregation in church; and all masters and mistresses failing to catechize the young and ignorant dependent on them.<sup>1</sup>

The oath used in 1643 was very much broader in its scope: by its terms, the churchwarden was required, first, to present all who, to his knowledge, had been guilty of uttering "wicked" oaths, violating the Sabbath, profaning the name of God, or abusing His Word and Commandment, contemning His Holy Sacraments, or anything relating to His worship, committing adultery, fornication, drunkenness or defamation, or remaining away from divine service; secondly, to return a correct account of all collections made in accord with the vestry's assessments; and finally to disburse the amount of these collections in obedience to the vestry's orders.<sup>2</sup>

Under an Act passed in 1662, the churchwardens were also required by the general terms of their oath to keep the church edifice in good repair; to purchase the books needed for the registry of births and deaths; and also the communion cloth and napkins, and the cushions for the pulpit.<sup>3</sup>

<sup>1</sup> Henning's *Statutes*, vol. i., p. 156.    <sup>2</sup> *Ibid.*, vol. i., pp. 240-1.

<sup>3</sup> *Ibid.*, vol. ii., p. 52. "The grand jury having presented the Parish of Sittingbourne for not entertayning a minister, or providing a minister or reader, and for not keeping their Church in due Repair, the Court hath ordered that the Sheriff of their County or his deputy doe summon the churchwardens of the said parish in behalf of the Parish to appeare at ye next Court held for this County there to answer ye Sd. Presentment"; Rappahannock County Records, Orders January 5, 1690.



The oath prescribed for churchwardens in 1664 was in substance the same as that prescribed in 1662; it only required in addition that they should see that all the ceremonies and rites performed in the parish church should conform to the "orders and canons of the English Church"; and that the liturgy for the administration of the sacraments should be in harmony with the Book of Common Prayer.<sup>1</sup> The oath used in 1696 followed the general tenor of the preceding one.<sup>2</sup>

To whom were the churchwardens' presentments for the different moral offences made? Under an Act of Assembly passed in 1639, it was provided that these officers should make their presentments to the monthly courts; and at this time, therefore, their jurisdiction in the matter of such offences corresponded almost exactly with that of ordinary grand jurymen.<sup>3</sup> After a presentment was entered, the monthly court issued its warrant requiring the accused to appear at the next term in order to defend himself against the charge.<sup>4</sup> The Act of 1662 directed that churchwardens should, twice a year, first, in December, and secondly, in April, submit to the justices in writing a report of all "such misdemeanors as to their knowledge, or by common fame" had been committed while they filled the office; and they were also empowered to summon to the next session of the court the witnesses on whose testimony

<sup>1</sup> Northampton County Records, vol. 1664-74, p. 1. This oath was, no doubt, the one taken by churchwardens throughout the Colony.

<sup>2</sup> Colonial Entry Book, vol. lxxxix, pp. 181-2. The oath was taken before the county justices; Northampton County Records, vol. 1657-64, p. 106; York County Records, vol. 1657-62, p. 302.

<sup>3</sup> Acts of Assembly, Jan'y 6, 1639, Randolph MS., vol. iii., p. 231.

<sup>4</sup> Lower Norfolk County Records, vol. 1646-51, p. 122.

this report had been based.<sup>1</sup> Here again we find that the churchwardens were expected to supplement the duty imposed on grand jurymen; save only that their jurisdiction did not extend as far as felony.

One of the most important duties of churchwardens growing out of their relation to the presentment and punishment of moral offenses was to see that the parish was saved from expense in cases of bastardy.<sup>2</sup> When a female servant gave birth to a child, the father of which was her master, they were authorized to sell the mother for a period of two years; and the sum of tobacco thus obtained was paid over to the parish.<sup>3</sup> Sometimes, however, they compelled the father to give bond that he would protect the parish against any outlay on account of the mother and child while the woman remained in his service.<sup>4</sup> In the cases in which the bastard was born of a free English mother and a negro father, the churchwardens would order the woman to pay fifteen pounds sterling within one month after the birth of her child; and if she were unable to do so, she was sold for a term of years to the person

<sup>1</sup> Hening's *Statutes*, vol. ii., p. 51.

<sup>2</sup> The first step towards effecting this seems to have been to present the case of bastardy to the county court. "Whereas complaints hath been made to me by ye churchwardens of this our parish of Southwarke that Jane Sudley, a woman servant belonging to William Carpenter, is lately delivered of a bastard child, and is likely to be chargeable to sd. Parish, these are, therefore, to require you to attach ye body of ye said Jane Sudley to bring her before me, and my fellow Justices on Monday next at ye Wareneck about 11 o'clock"; Surry County Records, vol. 1684-86, p. 7, Va. St. Libr. When the woman was convicted, the fact was reported to the vestry of the parish, who then directed the churchwardens to take the steps referred to in the text; see Henrico County Minute Book, vol. 1682-1701, p. 139, Va. St. Libr.

<sup>3</sup> Colonial Entry Book, 1681-84, Acts of 1660.

<sup>4</sup> York County Records, vol. 1657-62, p. 324, Va. St. Libr.

offering for her the largest amount. If, on the other hand, the mother was a servant, the churchwardens waited until the expiration of her indentures and then disposed of her to the highest bidder for a period of service to last five years.<sup>1</sup>

It was always in the power of the master of the guilty woman, if not himself the father of her illegitimate child, to prevent her sale by voluntarily paying such a sum on her account as would remove all risk of the parish incurring expense through her misconduct; for instance, about 1686, Mr. Alexander Dornphin, of Rappahannock, confessed judgment to the churchwardens of St. Mary's parish, for that parish's use in the amount of five hundred pounds of tobacco, the fine imposed on Ann Palmer, his servant, for bastardy. A like case occurred in the same county in the course of 1690.<sup>2</sup> In both cases, the servants were required to reimburse their masters by an extension of their terms of indenture; and no doubt this compensation was, in 1696, also granted to John Collion, of Essex, who, of his own motion had bound over his whole estate to save the parish from any expense to it that might arise from one of his servants having given birth to a bastard.<sup>3</sup> And a like bond was exacted of John and Matthew Williamson, who resided in the same county, because they had recently imported several women known to be of lewd character.<sup>4</sup>

The county courts, however, exercised a close supervision over the action of the churchwardens in

<sup>1</sup> B. T. Va., 1691, No. 29.

<sup>2</sup> Rappahannock County Records, vol. 1686-92, orig. pp. 125, 252, Va. St. Libr.

<sup>3</sup> Essex County Records, Orders June 10, 1696.

<sup>4</sup> *Ibid.*, Sept. 10, 1697.

dealing with women of blown reputation to see that they were not treated with unnecessary harshness. In 1693, Elizabeth Paine was ordered by the churchwardens of York parish, for some offence committed by her, to leave the plantation where she had been living; she at once appealed to the justices of the county for permission to remain, as she had ground there prepared for a crop, which, she said, would be lost to her and her "poor children," should she be forced to abandon it. The court granted her full liberty to stop on the plantation until the tobacco had matured and been cut; and all persons disposed to interfere with her were commanded to refrain from doing so under the penalty of a heavy fine.<sup>1</sup>

The churchwardens were impowered to bind out, until he was thirty years of age, every bastard unprovided for; and if they neglected to do so, they ran the risk of being prosecuted in the county court.<sup>2</sup> Their jurisdiction also extended to all orphans who were lacking in means of support. In a case of this kind, it seems to have been usual to place the child with a planter or tradesman under articles of indenture to serve until he or she had arrived at the age of twenty-one, at which time the term of apprenticeship came to an end.<sup>3</sup> Such an orphan frequently received from the parish a certain sum in the form of tobacco to cover the expense of apparel; in 1691, for instance, a girl who had been bound out to Daniel Neech, a citizen of Northampton, through him petitioned the court of that county

<sup>1</sup> York County Records, vol. 1690-94, p. 287, Va. St. Libr.

<sup>2</sup> B. T. Va., 1691, No. 29; Middlesex County Records, vol. 1680-94, p. 5.

<sup>3</sup> Surry County Records, vol. 1645-72, p. 386, Va. St. Libr. In this case, the orphan was apprenticed until he should reach the age of twenty-four years.

to allow her five hundred pounds of tobacco in order to clear the parish of all further charge for her clothing; and this appeal was approved by the justices.<sup>1</sup> The churchwardens were also required to report to the county court the existence of every case in which parents were unable to afford their children a decent maintenance; and under these circumstances, they were authorized to bind these children out for a long term of years in which to acquire skill in a trade.<sup>2</sup> Their jurisdiction also extended to those cases in which the parents were not only very indigent, but also disposed to encourage their offspring in bad courses. In 1692, John Higgleby, of Henrico, was reported to the justices of that county as "an idle and lazy person," whose children derived their only support from what he was able to beg, or they to purloin. Having himself refused to bind them out as apprentices to tradesmen, the churchwardens were instructed by the court to do so, should they find that he continued to lead the life of a vagabond, without making any endeavour to secure for his sons and daughters an honest subsistence.<sup>3</sup> It was particularly incumbent upon these officers to keep under their supervision the treatment which the boys and girls they had bound out received from their masters, and of all cases of neglect or cruelty to give the county

<sup>1</sup> Northampton County Records, vol. 1689-98, p. 93. In 1645, the county court of Lower Norfolk directed the churchwardens of Lynnhaven parish to report to the vestry the amount of tobacco they had collected in the parish for the maintenance of an orphan, at that time in the custody of one of its inhabitants; see Orders June 16, 1645.

<sup>2</sup> Northumberland County Orders Aug. 19, 1691. In this case, Thomas Seddon, Jr., a child only a year old, was, with his father's consent, bound out to John Bird until he should reach his majority.

<sup>3</sup> Henrico County Records, vol. 1677-92, orig. p. 427.

court prompt information; in such a case, an inquiry was at once instituted by the justices; and if the charge was found to rest on good ground, not only was the master punished, but the child was transferred to another person so as to remove him from all chance of again becoming the victim of the same harshness.<sup>1</sup>

In a general way, it may be said that it was the churchwardens' duty to call attention to all cases of extreme poverty. The aged pauper was as much an object of their care as the most youthful orphan entirely lacking in means. The benevolence of wealthy citizens had, as we have seen, established in some of the parishes a fund for the maintenance of the helpless poor, but the number of parishes enjoying such a fund was necessarily comparatively small. The poor who were wholly without resources were almost everywhere directly dependent upon the vestry's aid, as extended through the churchwardens. As there was no such establishment in the parish as an almshouse, the pauper was supported at the parish's expense by boarding him at the home of some citizen willing to receive him for a sum agreed upon beforehand. Sometimes, the compensation assumed the form of an exemption from public and county levies; such was the return made to Francis Youell, of Henrico, who, at the solicitation of Bristol parish, had brought a "poor and impotent" person into his house under a contract with the vestry to support him.<sup>2</sup> Generally, however, a specific sum in tobacco was annually granted in the parish levy to anyone who,

<sup>1</sup> Richmond County Orders Aug. 2, 1693; Lower Norfolk County Records, vol. 1646-51, p. 120.

<sup>2</sup> Henrico County Minute Book, 1682-1701, p. 267, Va. St. Libr.

at any time during the previous twelve months, had taken care of a pauper. Very many instances of this kind are recorded. For example, in 1658, James Whiting, of York county, received a considerable amount from the vestry for his trouble and expense in looking after a "poore woman" who had died in his house, where she had been living during nearly three weeks.<sup>1</sup> Again, in 1687, Hannah Moore, of Northampton, being entirely without means to afford her relief in her distress, was placed in the home of Thomas Lucas, with whom the churchwardens of Hungar's parish had contracted for her comfortable support in return for an amount to be allowed at each levy.<sup>2</sup> Sometimes, the sum annually received for the care of a pauper was estimated as high as two thousand pounds of tobacco.<sup>3</sup>

Beverley, commenting on the provision made for the indigent in Virginia at the end of the century, declares, with undisguised pride, that the pauper was not taken care of "at the common rate of some countries, that gave but just sufficient to preserve the poor from perishing, but the unhappy creature was received into some charitable planter's house, where he was at the public charge boarded plentifully."<sup>4</sup> In writing these words, it is evident that Beverley had England in mind. The Colony was in a position to make a much more liberal provision for the destitute to be

<sup>1</sup> York County Records, vol. 1657-62, p. 101, Va. St. Libr.

<sup>2</sup> Northampton County Records, vol. 1683-89, p. 344.

<sup>3</sup> "Ordered that Dr. Robert Boodle doe keep Bridgett Press, an impotent woman, with sufficient diett, washing, lodging, and apparell until ye next vestry laying the parish levy, for which ye sd. Boodle is to have 2000 pounds of tobacco"; Middlesex County Records, Orders Febr'y 3, 1689/90.

<sup>4</sup> Beverley's *History of Virginia*, p. 223.

found in her different parishes than the Mother Country could do for hers, first, because food was so abundant in Virginia that the average expense of maintaining a pauper in a private house, where he obtained as much to eat as the members of the family, was almost always small; and secondly, because the number of paupers in the Colony was at no time large. During the Seventeenth century, the cost of food in England was generally high as compared with its cost in Virginia; and there were few English parishes not greatly burdened with poor persons entirely dependent on the parish rates for a subsistence. The opportunities for earning a livelihood in the Colony were too numerous to allow the creation of an onerous class of paupers in its different communities resembling the class that taxed so heavily the pecuniary resources of the English people. The happy circumstances which made it so easy, comparatively speaking, to support what poor did exist in Virginia operated to diminish their number by throwing open to all persons the door to at least a moderate degree of prosperity. So urgent was the demand for agricultural laborers throughout every period of the Seventeenth century that a man or woman in the possession of sufficient strength to plant and hoe corn and tobacco, or even to strip the tobacco when ready to be placed in the hogshead, never lacked employment sufficiently remunerative to afford good lodgings and an ample supply of food.

As a rule, only persons both physically disabled and entirely devoid of resources of their own sought the alms of the parish.<sup>1</sup> Sometimes, however, the church-

<sup>1</sup> Parish aid seems to have been sometimes extended only to meet one form of expense, such, for instance, as rewarding a physician



wardens afforded relief to wives, who, with their children, had been turned out of doors by their husbands to depend for subsistence on charity. Mary Lawrence, of Accomac, having (in 1676) complained to the county court that her husband had driven her into the road and refused to maintain her, the justices entered an order that she should be returned to her home; and that, if an inquiry should show that her husband was a vagabond, he was to be seized and hired out for a term of years for her and her child's support, but, in the meanwhile, the latter two were not to be allowed by the churchwardens to suffer for lack of food.<sup>1</sup> In 1688, Mr. Samuel Peachey, of Rappahannock, on behalf of North Farnham parish, reported to the justices of the county court that Thomas Clutton had stolen out of the county, and that his wife, whom he had left behind, was so old and deaf that, unless the remnant of her husband's estate was sold for her benefit, she would be thrown on the parish for a subsistence. The court gave directions that an inventory of Clutton's property should be at once taken in the churchwardens' presence; that these officers should act as trustees of whatever estate was found; and that it should be expended by them towards the support of the deserted woman.<sup>2</sup>

The collection of the amount of tobacco imposed

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for the cure of a pauper's "sore leg" and the like; or providing food without at the same time providing lodgings. For a case of a single physician's fees for medical attendance on the poor amounting in one levy to two thousand pounds of tobacco, see Middlesex County Records, vol. 1673-80, folio p. 148.

<sup>1</sup> Accomac County Records, vol. 1676-78, p. 12. Another case of non-support will be found in York County Records, vol. 1694-97, p. 348, Va. St. Libr.

<sup>2</sup> Rappahannock County Records, vol. 1686-92, orig. p. 94.

by the parish levy on all tithables in order to meet the parish expenses, or the supervision of such collection, was one of the most important of all the duties performed by the churchwardens as the agents of the vestries. As early as 1643, an Act of Assembly required that an annual meeting of the ministers and churchwardens of each county, in the nature of a visitation according to the orders of the Anglican Church, should be held after Easter before the commander and commissioners of the county's court; and that, at this visitation, the churchwardens should hand in a true and full report of all the collections and disbursements which they had made in conformity with the parish levy.<sup>1</sup> Where one of them had advanced his own tobacco to meet urgent parochial expenses, he was to be saved from loss by having returned to him an amount exactly equal to what he had paid out.<sup>2</sup> The churchwardens of each parish were authorized to issue a warrant of distrain against the goods and chattels of all persons failing to pay the parish taxes; we find this power exercised by them in Accomac as early as 1632<sup>3</sup>; and they were also authorized to issue a writ of attachment against the general estate of any one guilty of the same delinquency. This process was used in 1663 by the churchwardens of Elizabeth River parish against Thomas Lambert's property in order to enforce a debt of this kind amounting to three thousand pounds of tobacco.<sup>4</sup> When the refusal to pay the parish tax

<sup>1</sup> Acts of Assembly, 1643, MS., Clerk's Office, Portsmouth, Va.; see also Hening's *Statutes*, vol. i., pp. 240-1.

<sup>2</sup> Lower Norfolk County Records, Orders June 15, 1646.

<sup>3</sup> Accomac County Records, Orders Jan'y 7, 1632.

<sup>4</sup> Lower Norfolk County Records, vol. 1656-66, p. 360<sup>2</sup>.

was based on some legal ground, these officers seem to have had recourse to a formal suit to test the strength of the claim; such a suit was in 1682 entered in Henrico county court against Major Thomas Chamberlaine for the sum of four hundred and fifty pounds of tobacco, assessed by the vestry against him in laying the parish levy<sup>1</sup>; and numerous cases of this kind appear in the records.

As time lapsed, it became increasingly the rule for the churchwardens to leave to the different county sheriffs the task of gathering in the parish dues.<sup>2</sup> There were several reasons for this:—first, in collecting the county taxes, it required no additional exertion or expense on the latter officers' part to collect the parish dues also, as they were payable at the same time; and secondly, should this duty be performed by the churchwardens, who were generally among the wealthiest and busiest planters in their community, they would be forced to abandon their regular employments for the time being, at great risk of pecuniary loss and personal inconvenience. It was because the parish dues were so often collected by the sheriff that the county court frequently directed the vestry to hold a meeting for the purpose of laying the parish levy, as this would prevent any delay on the sheriff's part in collecting all the taxes, which could only be done successfully at one period of the year.<sup>3</sup> Sometimes, the vestry would petition the county court to allow the sheriff to collect the parish dues; this occurred, in

<sup>1</sup> Henrico Minute Book, 1682-1701, p. 166, Va. St. Libr.; see also York County Records, vol. 1694-97, p. 226, Va. St. Libr.

<sup>2</sup> Present State of Virginia, 1697-8, section relating to vestry; Culpeper's Report, 1681.

<sup>3</sup> See Elizabeth City County Records, vol. 1684-99, p. 45, Va. St. Libr.

1661, in Hungar's parish, in Northampton; the vestry of that parish requested that, not only should the sheriff collect the parish taxes, but that he should also distrain in all cases of delinquency.<sup>1</sup> Originally, it was customary for the inhabitants of Lower Norfolk to bring their parish dues, in the form of tobacco and corn, to certain places previously designated by the churchwardens; but this occasioned such general inconvenience, that, about 1671, the county court gave orders that the sheriff should collect the whole amount in the manner usual with the county taxes.<sup>2</sup> So thoroughly were the collections made by the sheriffs towards the end of the century, that Beverley informs us that the tobacco due the minister was delivered at the parsonage, or the nearest landing, all packed in hogsheads ready for immediate shipment.<sup>3</sup>

The churchwardens were assisted in the performance of their general duties by two officers known as sidesmen or questmen, who were especially interested in looking out for persons whose conduct made it necessary that they should be subjected to civil or ecclesiastical discipline. The sidesmen were also useful in keeping a vigilant eye on the condition of the poor.<sup>4</sup>

<sup>1</sup> Northampton County Records, orig. vol. 1657-64, folio p. 115.

<sup>2</sup> Lower Norfolk County Records, Orders July 15, 1671.

<sup>3</sup> Beverley's *History of Virginia*, p. 212.

<sup>4</sup> Meade's *Old Churches, Ministers, and Families of Virginia*, vol. i., p. 146, Phila. edition; *William and Mary College Quart.*, vol. iii., p. 174.

## CHAPTER X

### Parish Church: How Built

THE first religious services held in Virginia were held at Jamestown under an old sail cloth only a short time after the voyagers of 1607 had landed. The sail cloth was tied to the trunks of three or four large oaks or cedars, and as thus spread out afforded an ample shelter from the rays of the sun. The walls of this improvised sacred edifice were made of rails mauled from timber procured on the spot; the seats, of the round and unhewn logs; and the pulpit, of a bar of wood nailed to two trees. When the sky became overcast and rain fell, the services were held in a large tent brought over from England. Such were the simple makeshifts for a church building used by the English after the foundation of their first permanent settlement in America.<sup>1</sup>

It was not long before a much less primitive church edifice was erected; but even this new building was looked upon as temporary in its character. It was in fact neither elaborate nor substantial. It was made apparently of roughly sawn planks or unhewn logs, in the shape of a barn; the roof was covered with rafts, sedge and earth; and so, we are informed, were the walls; while the weight of the whole rude structure

<sup>1</sup> *Works of Captain John Smith*, Arber's edition, p. 165.

rested upon crotchets.<sup>1</sup> This edifice was destroyed by fire within a few months after it was completed.<sup>2</sup> Captain Newport had by this time returned to the Colony with the First Supply, and as soon as this catastrophe occurred, he set his mariners to work to build a second church.<sup>3</sup>

The new edifice was, no doubt, of larger dimensions than the one that had recently been consumed by fire, for in length it extended sixty-four feet; in width, twenty-four. This church was still standing when De la Warr arrived at Jamestown. As this Governor was moved by extraordinary religious zeal, it was natural that one of the first acts of his administration should be not only to put the old building in a state of thorough repair, but also to make additions to it that greatly improved its appearance. The interior at least must have presented a very pleasing aspect;—the whole chancel was constructed of the timber of cedar trees; and of the same beautiful and sweet smelling material, which was extremely abundant in the surrounding forest, was also made the pulpit, the pews, and the window frames. The communion table consisted entirely of black walnut, whilst the baptismal font had been skilfully hewed and carved out of a single block of wood. The windows were sufficiently numerous to let in a great flood of light; and, as noted with admiration at the time, were of a character to permit their being shut or opened without difficulty as the state of the weather required.

The chancel and the interior walls were kept decorated with the many beautiful flowers found growing

<sup>1</sup> *Works of Captain John Smith*, Arber's edition, p. 165.

<sup>2</sup> *Ibid.*, Richmond edition, p. 170.

<sup>3</sup> *Brown's First Republic*, p. 57.

in such profusion in the thickets of the neighbouring woods; there could be no clearer proof of the loving interest taken in the church than was shown in thus adorning it from day to day while the wild flowers lasted; and, no doubt, when the frosts of November had destroyed all these blooms, branches of evergreens, like cedar, pine, and holly, were used to take the place of the dogwood, the sweet bud, the daisy, the clematis, and the arbutus. A steeple rose from the west end of the church; and within it were suspended two bells, which the sexton regularly rang at ten o'clock in the morning and at four in the afternoon, the earliest sound of church bells to call Englishmen to worship in the New World. It reveals the destructive influence of the varying climate,—now extremely hot or extremely cold, now excessively dry or excessively humid,—that this building, which was far from being unsubstantial, had sunk into such a condition of disrepair by the time of Dale's arrival in 1611, that it was found to be in imminent danger of falling to the ground.<sup>1</sup>

The religious spirit of Dale was revealed in the fact that, after he had chosen Henrico as the site of a new settlement, one of the first tasks he undertook as soon as he had erected the palisade and watchtower, a measure of defense, was to build a wooden church; this edifice was designed to be only temporary, for while it was in the course of erection, the foundations of a brick structure were laid, which however were never pushed to completion.<sup>2</sup> It shows how perish-

<sup>1</sup> Dale to the Council in England, May, 1611, Brown's *Genesis of United States*, vol. i., p. 492.

<sup>2</sup> A Briefe Declaration, p. 75, *Colonial Records of Va., State Senate Doct., Extra*, 1874. *Works of Captain John Smith*, vol. ii., pp. 11, 12, Richmond edition.

able these early wooden churches were that, on Argoll's arrival at Jamestown in 1617, the church edifice there had become such a ruin that the people were forced to hold religious services in a storehouse.<sup>1</sup>

It was in this year that Mrs. Mary Robinson, a pious and philanthropic lady of England, bequeathed two hundred pounds sterling for expenditure, in part at least, in the building of a church for the Indians' use; in her will, she directed her cousin, Sir John Wolstenholme, who seems to have acted as her executor, to exercise his own judgment as to where this church should be placed; but he was required to pay over the gift for the purpose designated within a period of two years after her death. The General Court of the London Company ordered a memorial of her name and her benefactions to be hung on the walls of the room in which they held their usual meetings, whilst they sent instructions to all the clergymen residing in Virginia to commend her in their prayers to the favour of God.<sup>2</sup> With the fund thus obtained, a church was erected in Smith's Hundred.<sup>3</sup> The great massacre of 1622, which so completely altered the friendly relations of the settlers with the savages, no doubt put a sudden stop to all plans which might then have been under advisement for the building of additional churches for the Indians' benefit.

When Governor Yeardley arrived at Jamestown in 1619, he found a church in use by the people of that place which had been built by themselves without

<sup>1</sup> *Works of Captain John Smith*, vol. ii., p. 33, Richmond edition.

<sup>2</sup> For will of Mrs. Robinson, dated Febry. 13, 1617 (O. S.) see *Brown's First Republic*, p. 275; see also *Abstracts of Proceedings of Va. Co. of London*, vol. i., p. 29.

<sup>3</sup> *Brown's First Republic*, p. 286.



any assistance from persons residing elsewhere. As this edifice is stated to have been fifty feet in length and twenty in width, its dimensions were, by a number of feet, smaller than the dimensions of the church in which De la Warr and Dale had worshipped, although the population of Jamestown must have increased in the interval. The wooden church erected at Henrico when Dale had founded a town there had, by this time, fallen into a state of complete dilapidation. Apparently, there were no church edifices in existence on the other plantations in spite of the fact that many of these plantations contained numerous inhabitants; the religious services held there were quite probably conducted in private residences,<sup>1</sup> for, only four years later, an Act was passed requiring a house or room to be set apart exclusively for religious exercises in every settlement where "the people used to meet for the worship of God"; a custom which, no doubt, prevailed wherever the number of persons made up more than one family.<sup>2</sup>

It was provided by law in 1631-2 that the inhabitants of every parish should contribute an amount sufficient to build a church on a site selected by the clergyman and the churchwardens, and that, if the county justices neglected to compel the parish officers to carry out this order when disregarded, they were to forfeit fifty pounds sterling.<sup>3</sup> Seven years later, the Governor and Council, acting in their ecclesiastical capacity, gave instructions apparently to the county court and the local military commander to supervise

<sup>1</sup> A Briefe Declaration, p. 80, *Colonial Records of Va.*, State Senate Doct., Extra, 1874.

<sup>2</sup> Hening's *Statutes*, vol. i., p. 123.

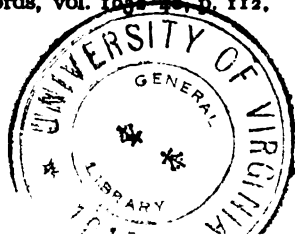
<sup>3</sup> Acts of Assembly, 1631-2, Randolph MS., vol. iii., p. 216.

the erection of a church in the upper parts of Lower Norfolk; and the county court was required to enforce these instructions, should the contractors fail to carry out their agreement. The choice of the exact site for the building was, in this case, it seems, left to the commander and justices, and not to the clergymen and churchwardens of the parish, although it is quite probable that the wishes and opinions of the latter were fully consulted. The edifice had been completed only in part when Captain John Sibsey and Henry Sewell were appointed by the county court to procure mechanics to finish the work, the cost of which was to be met by a special tax to be paid by the people.<sup>1</sup>

Whilst the expense of erecting a church was not infrequently covered in part by the fines assessed by the county court as the penalty for the commission of various offenses,<sup>2</sup> yet the chief method of raising the necessary funds continued, during the whole of the century, to be the imposition of a tax, which fell, like the ordinary items in the county and parish levies, on the people at large. It is probable, however, that this tax was generally confined to the tithables residing within the bounds of the parish in which the church

<sup>1</sup> Lower Norfolk County Records, Orders Nov. 21, 1638. Under the authority of the Act for establishing ports, passed in 1654, the justices of Lower Norfolk county selected the plantation of William Shipp on Elizabeth River as the place where to build a new church and lay off a new market. Land belonging to Mrs. Yeardley situated on Lynnhaven River was chosen as the site for the second church, and also for the second market; Lower Norfolk County Records, Orders July 16, 1655; see also the Lower Norfolk County Antiquary, vol. iii., p. 32.

<sup>2</sup> In 1638, David Winley, of Accomac, was fined one hundred pounds of tobacco for slander, which was devoted to the erection of a new church; Accomac County Records, vol. 1638-40, p. 112, Va. St. Libr.



was to be built. In 1640, an order was issued by the justices of Lower Norfolk that the inhabitants of the particular area of country beginning at Mr. Peter Porter's house and ending at Captain Thomas Willoughby's, should contribute, for repairing and finishing the parish church, one bushel of corn and twenty-four pounds of tobacco per poll. Special gifts of one hundred pounds of tobacco each had already been received for this purpose from Mr. Cornelius Lloyd and other wealthy citizens.<sup>1</sup> The building of this church had been greatly delayed by want of nails and other iron work, but these articles were in the end furnished by one of the parishioners, who further showed his interest in the edifice's completion by promising to give it his personal labor for the space of a fortnight.<sup>2</sup>

An Act of Assembly, which had confirmed the boundaries laid off for Lawne's Creek parish, relieved the inhabitants of Chippenoke and Hog Island of the payment of one half of their dues to the clergyman at Jamestown, provided that they contributed to the fund for the erection of the new church at that place. For this, the parishioners of James City had already been assessed.<sup>3</sup> In 1642, the people of Hog Island

<sup>1</sup> Lower Norfolk County Records, Orders March 15, 1640. When the parish covered a very wide area of ground, there was sometimes a private arrangement between the inhabitants of one half of it and the inhabitants of the other half to aid each other in building two churches, one for each half of the parish. This occurred in Fairfield parish in Northumberland County in 1696; see Minutes of Council, Oct. 9, 1696, B. T. Va., vol. liii.

<sup>2</sup> Lower Norfolk County Records, Orders July 6, 1640. At this time, there were parish churches at Lynnhaven and Sewell's Point; and an order had been issued to build a chapel-of-ease at Elizabeth River; see Lower Norfolk County Records, Orders Aug. 3, 1640, May 2, 1641; also Lower Norfolk County Antiquary, vol. i., p. 143.

<sup>3</sup> Robinson Transcripts, p. 230.

were released from the obligation of making such a contribution because it was held that they resided too far away from the town.<sup>1</sup> To the church at Jamestown, as to so many others, private individuals had made liberal gifts to ensure its early construction. This fact we learn from a letter addressed by Governor Harvey and his Council to the Committee of Plantations in England, in which it was stated that, previous to January, 1639-40, they had not only presented out of their own purses a large sum to be expended for this purpose, but had induced numerous shipmasters and planters to imitate their example.<sup>2</sup> The edifice had not been finished by 1642, for, in the course of that year, the General Court entered an order touching its completion.<sup>3</sup>

About 1656, so many parishes were without an edifice for religious services that it was found necessary to pass an Act providing for the removal of the deficiency. It was ordered that every person residing in a parish lacking such an edifice and also a clergyman, should pay annually into the county court's hands the sum of fifteen pounds of tobacco, to be used towards the erection of a parish church, and the purchase of a glebe as a means of insuring a comfortable support to whatever minister should be called to fill the vacant position.<sup>4</sup> A few years later, it was recognized that so general a law as this might work a great hardship in the parishes occupied by a population

<sup>1</sup> Hening's *Statutes*, vol. i., 277.

<sup>2</sup> British Colonial Papers, vol. x., 1639-43, No. 5. In his will, dated 1636, William Beard left 500 lbs. of tobacco to a "new Church at James City," i.e. towards its construction; *Va. Maga. of Hist. and Biog.*, vol. xi., p. 148.

<sup>3</sup> Robinson Transcripts, p. 236.

<sup>4</sup> Randolph MS., vol. iii., p. 263.

both small and impoverished on account of the barrenness of the soil, the unhealthiness of the plantations, or some other cause of a like blighting nature; in a case of this kind, the parish was to be consolidated with one adjacent, and the inhabitants of the former of the combined parishes were to be required to build only a chapel-of-ease, in which the usual services were to be held.<sup>1</sup>

One of the different forms of oppression inaugurated during the period when the vestries, following the example of the Long Assembly, sought to perpetuate themselves without submitting to an election by the popular voice, was to levy a public tax for the erection of new churches when the old had, by mere carelessness, been suffered to fall into a state of neglect, though capable of restoration by the expenditure of a small amount. In 1675, the inhabitants of Accomac complained bitterly to the county court that such a charge had been imposed on them at a time when there was a church in the parish going to ruin merely because it had been half finished; and that until this was completed, it was contrary to "law and reason" to start building another one, especially when they had already been mulcted to "the utmost of their abilities."<sup>2</sup>

As we have seen, gifts from private citizens to aid in the erection of a new church were not uncommon previous to the middle of the century. After that time, such gifts became more frequent owing to the growth of population and the great increase in the wealth of individual planters. About 1660, a large amount of tobacco was contributed to the building of a church in Upper Machodick parish, in Westmore-

<sup>1</sup> Hening's *Statutes*, vol. ii., p. 44.

<sup>2</sup> Accomac County Records, vol. 1673-76, p. 362.

land county, by Nathaniel Jones, and also by one of his kinsmen who was interested in advancing the religious welfare of the people.<sup>1</sup> Before a public levy was laid for the construction of the church at Middle Plantation in 1678, voluntary donations were solicited of the parishioners, and in response to the appeal, John Page and Thomas Ludwell each subscribed twenty pounds sterling, and Philip Ludwell and Col. Thorp each ten, whilst numerous citizens contributed respectively five pounds sterling.<sup>2</sup> Thomas Ludwell showed special generosity, for, under the provisions of his will, he left, for the same general purpose, thirty pounds sterling,<sup>3</sup> a sum that had a purchasing power of about seven hundred and fifty dollars in modern currency. The entire cost of building the church at Middle Plantation was stated by Culpeper to have been eight hundred pounds sterling, which represented an amount equal in value to twenty thousand dollars at least.<sup>4</sup>

In 1682, Robert Everett, of York, made a gift of five hundred pounds of tobacco towards the erection of a new church in Poquoson parish.<sup>5</sup> Lieut. Gov. Nicholson, who was conspicuously generous in contributing to the like objects, wrote, in 1690, to the justices of Lower Norfolk, to remind them that they "should not allow him to be disappointed in paying what he

<sup>1</sup> Westmoreland County Records, vol. 1653-72, pp. 122, 170.

<sup>2</sup> Meade's *Old Churches, Ministers, and Families of Virginia*, vol. i., p. 146, Phila. edition.

<sup>3</sup> Will of Thomas Ludwell, *Waters's Gleanings*, p. 719. This money was to be employed "towards building a church in Virginia."

<sup>4</sup> Colonial Entry Book, 1681-5, pp. 173-4. Culpeper stated this in his report to the Board of Trade in 1683. The amount seems so large that it is possible there was some mistake. See also *William and Mary College Quart.*, vol. iii., p. 172.

<sup>5</sup> York County Records, vol. 1675-84, orig. p. 447.

had promised" towards the completion of one of the churches of that county then in the course of construction; and a few years later, he subscribed twenty pounds sterling to the fund which was to be expended in erecting a similar building at Yorktown.<sup>1</sup> The presentation of a site for a new edifice of this kind was not an infrequent act of liberality on the part of wealthy planters; in 1658, Joseph Croshaw, of York, granted in fee simple, not only the ground on which the new church of Marston parish was to stand, but also a considerable additional area to serve as a yard; James Calthorpe, of Poquoson parish, made, in 1688, a similar gift; and their example was followed by George Barrow, of Sittingbourne parish, in Rappahannock.<sup>2</sup>

A contract between the churchwardens of Hungar's parish, in Accomac, and Simon Thomas, a carpenter, preserved among the records of that county, gives no doubt, a fairly accurate idea as to the method followed in building parish churches towards the close of the Seventeenth century. Under the terms of this agreement, the projected edifice was to extend forty feet in length and twenty-five in width. Its framework, which was to be constructed of wood, was to be supported by blocks cut from the trunks of the locust as a tree especially remarkable for the durability of its fibre even when exposed to the most trying variations of weather. This skeleton frame was to be covered with planks of the finest quality, whilst the

<sup>1</sup> Lower Norfolk County Records, vol. 1686-95, p. 145; York County Records, vol. 1694-97, p. 323, Va. St. Libr.

<sup>2</sup> York County Records, vol. 1657-62, p. 104; vol. 1687-91, p. 453, Va. St. Libr.; Rappahannock County Records, vol. 1656-64, orig. p. 309.

braces, studs, and rafters were to consist of seasoned oak. The ceiling of the old church, which must have still been in a sound condition, was to be transferred bodily to the new, and in reconstructing it, care was to be taken that it should "rest upon arches underneath the roof." These arches the carpenter agreed to build. The churchwardens, as the agents of the vestry, bound themselves to furnish the entire number of nails which would be called for in building the church; to supply the carpenter and his assistants with all the food they would need; and to transport to the site of the projected edifice whatever timbers would be required. Thomas, on his side, agreed to devote his attention to the work until it was completed, without allowing himself to be diverted by other tasks of the like nature, and without intermitting his labor except on "some great occasion"; and even this was, on no account, to draw him away from the church for a period longer than seven days. By way of compensation, he was to receive ten thousand pounds of tobacco, which represented a sum equal in modern values to about two thousand dollars.<sup>1</sup> Thomas seems to have been employed to erect more than one church, for, in 1681, he is found engaged in building an edifice of this kind in Northampton county.<sup>2</sup>

The great majority of the churches built in Virginia during the Seventeenth century were built of some

<sup>1</sup> Accomac County Records, vol. 1678-82, p. 240. As soon as a new church was finished, a committee was appointed by the county court to view it and make a report; see Lower Norfolk County Records, vol. 1656-68, p. 228; also Lower Norfolk County Antiquary, vol. iii., p. 103.

<sup>2</sup> Northampton County Records, vol. 1679-83, p. 187. The dispute referred to in this entry may have been connected with the new church in Hungar's parish alluded to in the preceding authority.



endurable variety of wood. There were a few, however, made of brick; such was the character of the material entering into the construction of the edifices at Middle Plantation and Jamestown. The church at Smithfield, which still stands in its original beauty and solidity, was also built of brick, and forms perhaps the most admirable specimen of ecclesiastical architecture in Colonial Virginia surviving to the present day. That fine structure, which recalls in its general aspect both within and without, so many of the ancient parish churches of England, bears silent testimony to the thorough organization reached at a very early date by the religious establishment in the Colony. It is hard to realize that a building like this, which would now appear more congruous if found standing in the valley of the Thames, or the Severn, in the midst of immemorial yews, was erected very probably within thirty years after the foundation of Jamestown. It offers very striking proof of the fact already dwelt upon, namely, that, from the very beginning, the settlements in Virginia resembled more the long established communities of England than the communities of a new country as conceived of by us in the light of our knowledge of the modern American frontier.<sup>1</sup>

One of the most frequent items in the list of expenses provided for in the parish levy was the cost of repairing the parish church from time to time. Sometimes, the outlay on this score was very heavy; in one case

<sup>1</sup> See Mr. R. S. Thomas's exhaustive article on the old brick church near Smithfield in *Va. Hist. Soc. Collections*. In 1695, a brick church was standing near Princess Anne courthouse; see *Princess Anne County Order Book, 1691-1709*, entry for Sept. 12, 1695. In that year, an order was entered for the building of the new courthouse "on the land belonging to the Brick church."

reported in Lower Norfolk in the course of 1656, it amounted to nearly seventy-five hundred pounds of tobacco<sup>1</sup>; and in other cases which might be mentioned the outlay was almost as large. A parish might well consider itself exceptionally fortunate should it have received from some benevolent testator a sum sufficient to meet the expense of repairing its church; such was the happy condition, in 1658, of the parish of Martin Brandon, to which John Sadler, a wealthy merchant of London, had left for this purpose a quantity of goods valued at twenty pounds sterling.<sup>2</sup> Nor was the need of renewal confined to the edifices built of such perishable material as wood:—in 1699, William Broadribb and Edward Travis, churchwardens of James City parish, petitioned the Governor and Council for public assistance in restoring the walls and pews of the church at Jamestown to their original sound condition.<sup>3</sup>

The principal seats in each church seem to have been held by the families of the wealthiest planters residing in the parish. The right to the exclusive enjoyment of a whole pew for an indefinite period was often granted in return for substantial aid in building the church itself; such was the reward which John Page and Edmund Jennings received for their generous contributions towards the construction of the church at Middle Plantation; such also Mr. Kendall for subscribing one thousand pounds of tobacco for the removal of the church in Hungar's parish to a new site.<sup>4</sup> Sometimes, the holder of a pew obtained his

<sup>1</sup> Lower Norfolk County Records; vol. 1656-66, p. 32.

<sup>2</sup> *Va. Maga. of Hist. and Biog.*, vol. vii., p. 211.

<sup>3</sup> They also requested aid in building a steeple; see *Minutes of Assembly*, May 17, 1699, B. T. Va., vol. lii.

<sup>4</sup> Northampton County Records, vol. 1689-98, p. 251. Mr. Kendall was on this occasion the only contributor.

right of permanent possession by having it built at his own cost; such was the manner in which Col. John Custis, of Northampton, acquired the one he occupied in his parish church; he seems to have paid Simon Thomas, the carpenter who erected the edifice, several head of live-stock and a large cask of cider to construct for him a pew, which, of all the pews, should be situated the nearest to the chancel. In seeking to be so placed, Custis was either vain and desired to own the most conspicuous seat on account of the prominence it would give him in the eyes of the congregation, or he was deaf and wished to be in close range of the pulpit and reader's desk.<sup>1</sup>

<sup>1</sup> "The deposition of Thomas Lucas saith that in September last at ye raising of ye new church, Mr. John Custis came thither and spoke to Simon ye carpenter to make him a pew in ye sd new Church, telling him he would give him . . . tobacco. Ye said Simon made answer yt he would not take tobacco to build it but had rather take creatures. Said Custis made answer yt he would give creatures to choose, and ye sd Custis desired to have ye first pew in ye church . . . and farther ye sd Custis bade ye sd Simon to send to his house and he would give him a thirty or forty gallon cask of Cyder to drink ye next day." Northampton County Records, vol. 1679-83, p. 187.

## CHAPTER XI

### Parish Church: Plate and Ornaments

THE plate and ornaments belonging to many of the churches during the Seventeenth century were both handsome and costly. Among the properties of St. Mary's, founded at an early date in Smythe's Hundred through the benevolence of Mrs. Mary Robinson, there were a silver communion cup, two chalices of the same precious metal, one white damask communion cloth, and several variegated carpets of damask with silk fringes. These different articles had been presented to this church after Mrs. Robinson's death by a benefactor who refused to reveal his identity; their fine quality was shown by the fact that they were valued at twenty pounds sterling, equal to about five hundred dollars in purchasing power. They appear to have been, for some years, left in Governor Yeardley's care; and when he died, were delivered by his widow into the possession of the General Court sitting at Jamestown.<sup>1</sup> A second benefactor, who was equally successful in concealing his name, presented to the Treasurer of the London Company for use in the chapel of the College projected for the education of

<sup>1</sup> General Court Orders, Febry. 9, 1627-8, Robinson Transcripts, p. 72; British Colonial Papers, vol. i., Doct. 46. Some of this plate is now in the possession of the vestry of the P. E. Church at Hampton, Va., and forms one of the most interesting relics of Colonial Virginia in existence.

Indian youths, a silver cup and plate for the wine and bread in the celebration of the communion; and also a carpet of crimson velvet and a table cloth of linen damask.<sup>1</sup>

Gifts of communion plate, or bequests of large sums to be invested in that form, were not confined to the period of the Company:—there are many instances of the like benefactions recorded of later times. In 1643, William Burdett presented the parish in Northampton by will with five pounds sterling for the purchase of a cup and plate for use in the celebration of the communion service<sup>2</sup>; and his example was followed, in 1654, by William Hawkins, of York, who directed that fifteen hundred pounds of tobacco belonging to his estate should be reserved for the purchase of a silver flagon, to be inscribed with his name and delivered to the churchwardens of York parish for use in the sacraments.<sup>3</sup> Three years later, Simon Overzee, of Lower Norfolk, placed in the hands of the churchwardens of Lynnhaven parish “a parcell of plate” which he had bound himself to buy for the benefit of the parish.<sup>4</sup> Dorothy Balridge, by will, in 1662, ordered her executors to obtain in England, at an expense of two thousand pounds of tobacco, “a bowle or cupp and chalice,” and having seen that her name was engraved on each piece, to present them to the church of Appomattox parish situated in Westmoreland county.<sup>5</sup> Ten years afterwards, Christopher Lewis,

<sup>1</sup> Abstracts of Proceedings of Va. Co. of London, vol. i., p. 13; British Colonial Papers, vol. i., Doct. 46.

<sup>2</sup> Northampton County Orders, July 4, 1643.

<sup>3</sup> York County Records, vol. 1633-94, p. 65, Va. St. Libr.

<sup>4</sup> Lower Norfolk County Antiquary, vol. iii., p. 51. He was required to do this by order of Court.

<sup>5</sup> Westmoreland County Records, vol. 1653-72, p. 189.

of Surry, bequeathed to the churchwardens of Southwark parish a silver flagon capable of holding two quarts of wine; and about the same time, George Watkins, of the same county, by will reserved a part of his personal estate for the purchase of a piece of silver plate for use in the church of Lawne's Creek parish.<sup>1</sup> In 1677, George Jordan, also of Surry, left by will to his parish church a baptismal bason of silver valued at three pounds sterling.<sup>2</sup>

Argoll Blackstone, of York county, in 1686, instructed his executors to invest the proceeds from the sale of one hogshead of tobacco in the purchase of a wine bowl, which was to be engraved with his name and presented to the vestry of York parish for use at the communion table.<sup>3</sup> George Spencer, of Lancaster, showed even greater liberality, for, in 1690, he directed that twenty pounds sterling, or five hundred dollars, of his estate at his death should be expended in the purchase of communion plate for the altar of St. Mary White-chapel in that county.<sup>4</sup> A few years later, a large silver plate was presented to Bruton parish by Governor Andros. The church in this parish was the beneficiary of several other gifts for use in the celebration of the sacraments; for instance, in 1694, Mrs. Kate Besouth bequeathed the vestry ten pounds sterling for the purchase of an additional piece of plate, on which her name was to be engraved. Mrs. Alice Page, in 1698, made to the same church a gift of one pulpit cloth and a velvet cushion of the

<sup>1</sup> Surry County Records, vol. 1671-84, pp. 54, 56, Va. St. Libr.

<sup>2</sup> Will of George Jordan, Surry County Records, vol. 1671-84, p. 296, Va. St. Libr.

<sup>3</sup> York County Records, vol. 1687-91, p. 121, Va. St. Libr.

<sup>4</sup> Lancaster County Records, vol. 1690-1709, p. 11.

finest quality.<sup>1</sup> Other articles for practical use were presented by generous testators; for example, in 1697, Thomas Cocke bequeathed one thousand pounds of tobacco to the churchwardens of Henrico parish, with the request that they should expend it in obtaining from England a bell, which was to be hung up in the parish church.<sup>2</sup>

In all those cases in which private liberality had failed to provide a communion service, the churchwardens were required by law to procure the necessary plate, and for this purpose, they were ordered to set aside a certain proportion of the parish levy annually until a sufficient amount had been accumulated.<sup>3</sup> Under an Act passed in 1662, they were also required to purchase for use in each church one large Bible and two Common Prayer Books, a communion cloth and napkins, a pulpit cloth and cushions, and also a bell with which to summon the people to worship.<sup>4</sup> On at least one occasion, the King of England himself made a present of sacred volumes to the churches in Virginia; this occurred in 1683, when there were delivered in the royal name, through the Bishop of London, forty two sets, each of which consisted of a folio Bible and Common Prayer Book in calf, the Homilies, the Canons, the Thirty Nine Articles, and the Table of Marriages.<sup>5</sup>

As the parish church was generally situated at some distance from the nearest plantation settlement, its surroundings not infrequently came to have a neglected

<sup>1</sup> *William and Mary College Quart.*, vol. iii., p. 173.

<sup>2</sup> Henrico County Records, vol. 1688-97, p. 686, Va. St. Libr.

<sup>3</sup> Acts of Assembly, 1662, Colonial Entry Book, vol. lxxxix., p. 5.

<sup>4</sup> *Ibid.*, p. 5.

<sup>5</sup> October 24, 1683, Colonial Entry Book, vol. 1681-85, p. 263.

air, especially in summer, when, owing to the rapidly alternating humidity and dryness, the weeds sprang up and spread with wild luxuriance everywhere. It was sometimes found necessary to make special provision for the destruction of these weeds; in 1641, all persons in Accomac who had failed to conform to a general order requiring them to carry arms whenever they went abroad, were punished by the county court's compelling them to go to the parish church on the following Saturday, there to cut away all the foul growth obstructing the yard about the building as well as the different bridle paths leading up to it.<sup>1</sup>

As early as 1623-4, ample provision was made by law for laying off a burial plat in the neighbourhood of every settlement; and again, in 1639, the county court was required to choose a "convenient parcel of ground" for a public graveyard wherever one did not already exist.<sup>2</sup> In both years, there is reason to think that a site was chosen near the parish church in accord with the custom which had prevailed in England from a very early period. Such a burial lot, however, was much less used in Virginia than in the Mother Country. In consequence of the remoteness of most of the plantations from the parish church, the habit sprang up in the Colony at an early date of burying the deceased members of a family in the garden attached to their dwelling house; and this habit has continued down to the present times. Owing to the extraordinary vicissitudes through which the colonial homes of Virginia have passed, in consequence of the numerous changes in the political, social, and economic condition of the community, few of these private burial grounds

<sup>1</sup> Accomac County Records, vol. 1640-45, p. 88, Va. St. Libr.

<sup>2</sup> Hening's *Statutes*, vol. i., p. 123; Robinson Transcripts, p. 219.



have escaped entire obliteration; nor would their fate have been very different had they formed a part of a public graveyard connected with one of the churches of the Seventeenth century, for only a very few of these edifices were able to withstand the destructive influence of the same far reaching changes succeeding each other at long intervals.

Great care was taken from an early period that there should be public highways running to the parish church, and that they should be kept in good condition. An Act of Assembly, passed in 1665, required that these highways should be at least forty feet wide; that no logs or stumps should be allowed to remain in their beds; and that the bridges along their course should not be suffered to fall out of repair.<sup>1</sup> It was perhaps this necessity of maintaining permanently a free and safe passage to the parish church which gave the colonial vestries their jurisdiction over the public thoroughfares. Numerous controversies arose over the question of a right to use a bridle path leading to church, and it frequently became imperative for the county court to settle a dispute of this kind.<sup>2</sup> The first attempt to block a bridle path which had been

<sup>1</sup> Northampton County Records, vol. 1664-74, p. 9.

<sup>2</sup> *Ibid.*, vol. 1674-79, p. 269.

"Whereas at a court held for this County May, the 10th Anno 1676, In the difference depending then between John Chilton and Isaac Wall plts. and Nicholas Wren, deft., concerning a Bridle-way to their parish Church, It was there ordered for the determination of the said difference that a way should be forthwith layd out by Mr. Thomas Haynie, Mr. Fortunatus Sydnor, John Custis and William Hatcher, and make report thereof to the Court, who upon their said report doe find the way which leads from Nicholas Wren's to the old Road is the best way, being a Ridge and but one swamp on the way, it is, therefore, advised etc;" Lancaster County Records, Orders Sept. 13, 1676.

long used by the public without their right of enjoyment being attacked, was promptly rebuked by that body, and if repeated, was put an end to for good by a more decisive interference still.<sup>1</sup>

<sup>1</sup> Essex County Records, Orders May 10, 1694.

## CHAPTER XII

### The Clergy : How Procured

**A**MONG the clergymen of the Anglican Church, who, during the Seventeenth century, occupied pulpits in Virginia, not one, so far as is now known, was a native of the Colony. Some had been born and educated in Scotland, but a very much larger number had emigrated from England, where they had first seen the light, and where they had also received their first lessons in letters and theology. What had induced these men to abandon the country in which alone they could, if possessed of great talents, look forward to securing the highest honors in their profession? In a general way, it may be said that there were two influences leading the great majority to settle in Virginia: first, in order to acquire a benefice in England, the clergyman must obtain the favor of some person or institution having the right of preferment, and it was no easy task for a young divine lacking in powerful connections to commend himself to the goodwill of the individual or the corporation entitled to name the next incumbent of a vacant rectorship; secondly, the condition of the clergy residing in the rural districts of England during the Seventeenth century was not distinguished for such comfort, prosperity, and honor as to make removal to the Colony always appear a step distinctly disadvantageous.

If the picture drawn by English historians of the

condition of the great body of the English rural clergy (who constituted the vast majority of the members of their profession) during the Seventeenth century, be correct, then the situation of the average occupant of a pulpit in Virginia was far more happy and fortunate; and the only ground for surprise is that more of the young English divines did not emigrate to the Colony. We are informed that, in ten instances out of eleven, the English rural ministers of the gospel stood in a position hardly superior to that of a menial servant. A very large number either lacked a benefice at all, or the benefices they held did not afford a decent living; and under these circumstances, they considered it a reason for congratulation, should they be able to obtain a room in the garret and a seat at the table of some great landowner. In this situation, the clergyman, if a man of strong self-respect, was exposed to various forms of mortification hardly compensated for by the bed, food, and pittance in money he received as a private chaplain. Should he be advanced to some living in his patron's gift the chances were that it would not assure an income sufficient to meet the expenses of a growing family, and in consequence he would be compelled to act as a common labourer on his own glebe. His children, we are told, were in no better position than the children of the peasantry attending his church; the boys assisted in ploughing the land, and the girls became seamstresses and ladies' maids; it followed that the family of the average clergyman enjoyed no advantages which raised them high above those sections of the community represented by small farmers and upper servants.<sup>1</sup>

<sup>1</sup> Macaulay's *History of England*, Chap. iii. After allowing for the rhetorical exaggerations of this historian, the substance of

In spite of this thriftless condition of so large a proportion of the English rural clergy, the demand for their services in Virginia could never be fully supplied. This fact was not due to the supineness of the colonial authorities. From the foundation of the settlement at Jamestown until the close of the century, there was a standing invitation to English divines to remove to the Colony as a field of labor in which their services were urgently called for. Rev. Alexander Whitaker, writing to Rev. William Crashaw in 1611, begged him to send at once over-sea such "young, godly, and learned" ministers of the Church of England as were lacking in employment at home. Young men, he declared, were the "best and fittest" for Virginia; there was no need there of those who gave an exalted significance to ceremony; nor was there any room for those who did not follow a clean and scrupulous life. What was wanted were men of discretion, scholarship, and zeal joined to practical knowledge.<sup>1</sup> In February, 1619-20, there were only five clergymen residing in the Colony, though at that time it was populous enough to be divided into eleven boroughs. The smallness of this circle led the London Company to ask the Bishop of London to supply for the vacant pulpits such a number of clergymen as would be needed to supplement the appointments to be made by the

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the testimony brought forward by him, and confirmed by the investigations of other writers, shows at least that the general condition of the English rural clergy at this time was one of great pecuniary narrowness. A remarkable tribute to Macaulay's knowledge of English history in the Seventeenth century was paid by the late Lord Acton, a man "fraught with all learning," in one of his letters to Mr. Gladstone's daughter recently published.

<sup>1</sup> Whitaker's Letter, Aug. 9, 1611, Brown's *Genesis of the United States*, vol. i., p. 499.

members of the Company itself.<sup>1</sup> The different inducements held out must have led the required number to settle in Virginia, for only a few years after the Company had taken a successful step to render the glebes profitable, we find it stated in a public paper issued by this body that a "store of ministers" had been imported into the Colony at the Company's expense.<sup>2</sup>

In 1629, Governor Harvey, just before he set sail for Virginia, in a letter addressed to the Privy Council, after touching at length on the Colony's crying need of "able and sufficient" ministers, strongly urged that six "grave and conformable" ones should be immediately sent out without cost to themselves for transportation, and furnished with the entire number of books they would have to use in instructing the people. And again, in 1631, after he had arrived at Jamestown, he earnestly repeated his request, perhaps because the Privy Council, whilst approving his first proposition, had declined to bear the clergymen's expenses in crossing the ocean.<sup>3</sup>

A few years after this petition was submitted, a number of divines, deprived of their benefices in England by the triumph of the Puritans, emigrated at their own cost to Virginia, where they were received with a hearty welcome. The author of *Virginia's Cure*, who went out to the Colony about the time the persecution of the loyal ministers began in the Mother Country, lauded the great love which the planters bore for the "stated constitution of the Church of England," whether relating to its form of govern-

<sup>1</sup> Abstracts of Proceedings of the Va. Co. of London, vol. i., p. 45.

<sup>2</sup> *Ibid.*, vol. ii., p. 188.

<sup>3</sup> British Colonial Papers, vol. v., Nos. 22, 23; Randolph Ms., vol. iii., p. 259.

ment or manner of public worship:—"we had the advantage of liberty to use it constantly among them," he wrote, "after the naval force had reduced the Colony under the power, but never to the obedience, of the usurpers"; and he goes on to contrast the fortunate condition of the Colonial church with the unhappy state of the church in England.<sup>1</sup> It was evidently thought by these emigrating clergymen that they had found in Virginia at least a land where the spirit of toleration prevailed, and where sermons might be delivered, and the lessons read, without fear of rude soldiery thrusting themselves into the pulpits to silence the preacher. Berkeley's heart turned with fondness to all things associated with the King's faithful supporters in the Civil Wars, but there was probably something more than this excusable prejudice which led him, in 1671, when he had grown to be an old man, to compare unfavorably the ministers then occupying the parsonages of the Colony with those "divers worthy men" whom the "persecution in Cromwell's tyranny" had driven to Virginia in search of an asylum.<sup>2</sup> These men were not young or unsuccessful divines who had come over in a spirit more or less of adventure and speculation, but clergymen of tried talents, and of ripe experience in their calling, who had been forced out of their pulpits practically at the point of the sword and bayonet.

Apparently, the demand for "able and sufficient" clergymen of the Anglican Church was as great in Virginia during the Puritan Supremacy as during any period of equal length in the Colony's history in the Seventeenth century. When, in 1655, Captain Thomas

<sup>1</sup> *Virginia's Cure*, p. 22, Force's *Historical Tracts*, vol. iii.

<sup>2</sup> Hening's *Statutes*, vol. ii., p. 517.

Willoughby was about to set sail "towards New England," he received a letter, signed by seven of the principal citizens of Lower Norfolk, in which he was requested to engage a preacher to serve in the parish; and as a means of securing a "godly and honest" man, whose abilities were "above distrust," Willoughby was impowered to offer an annual salary of ten thousand pounds of tobacco.<sup>1</sup> In the following year, Mr. Moore, of New England, was invited to become the minister of the same parish; and should he accept, he was promised the transportation to Virginia of himself and his family without personal cost, with "present entertainment" on his arrival, a convenient residence, and continuance in the position as long as he should find in it contentment and satisfaction.<sup>2</sup>

It reveals the extraordinary pains the Colony's authorities were at to secure competent divines to fill the different vacancies among the parishes, that, in 1650, the General Assembly declared that, should a shipmaster or merchant import a clergyman into Virginia without any agreement with him touching the payment of his expenses, then such shipmaster or merchant should receive by the public levy, to reimburse him for his outlay, twenty pounds sterling, either in the form of a bill of exchange or of twenty thousand pounds of tobacco. The parish in which the clergyman who had emigrated under these circumstances settled was required to raise this amount to assure its not falling on the taxpayers of the Colony at large.<sup>3</sup>

<sup>1</sup> Lower Norfolk County Records, vol. 1651-56, p. 158; Lower Norfolk County Antiquary, vol. iii., p. 31.

<sup>2</sup> *Ibid.*, vol. 1656-66, p. 29; Lower Norfolk County Antiquary, vol. iii., p. 33.

<sup>3</sup> See Henning's *Statutes* for 1656; also *Virginia's Cure*, p. 18, *Force's Hist. Tracts*, vol. iii.



It was with a view to securing a more certain means of supplying all vacant pulpits in the Colony that, in 1660-1, the project of establishing a college in Virginia was considered by the General Assembly. In the Act passed for giving form to this project, it was declared that, owing to the great distance between Virginia and the Mother Country, it would perhaps be impossible to draw from England the entire number of divines needed to afford the people "those great blessings that always attend on the service of God"; and that steps ought to be taken for the education in the Colony itself of the "able and faithful" clergymen for whom so much room already existed. And in a subsequent Act, the Assembly again declared that one of the principal ends sought for in the proposed college was to provide an "able and successive ministry"; and the people were urged to subscribe large sums of money or tobacco for its early erection.<sup>1</sup> Had this institution been founded and carried to such a pitch of development that native Virginians aspiring to the priesthood could have acquired in it the necessary training in theology, there would still have remained an obstacle of importance to overcome:—there was no bishop in the Colony to ordain such candidates; and in order to pass through that ceremony, they would have been compelled to visit London to receive the blessing of the Bishop of that city, in whose diocese the Colony lay. This would have caused a double expense, namely, the expense of the outward and the return voyage, whilst the clergyman of English birth who came over ordained had only to meet the cost of the voyage to Virginia; this fact would, in the long run, have placed the native Virginian, anxious to become a divine of the Church

<sup>1</sup> Henning's *Statutes*, vol. ii., pp. 25, 37.

of England, at a serious disadvantage in competing with the imported minister.<sup>1</sup>

The very year in which the project of the college was broached, Rev. Philip Mallory was dispatched to England for the purpose of arranging that a greater number of English clergymen should be sent out to the Colony,—a step in accord with the pressing appeal of the General Assembly, which had already written directly to the King to solicit his personal influence with the Universities of Oxford and Cambridge to induce them to furnish Virginia at once with all the ministers needed to fill the vacant parishes.<sup>2</sup> This appeal probably led to little from a practical point of view, for, only five years later, the lack of clergymen in the Colony was so great that the author of the pamphlet, *Virginia's Cure*, was moved to propose to the Bishop of London, as a certain means of meeting the want, that Parliament should establish in the two English Universities fellowships to be held only by persons who had bound themselves, after an enjoyment of seven years, to emigrate to Virginia, there to serve as ministers of the gospel during a period of seven years more; at the end of which time they were to be at liberty to return to England, should they prefer to do so. This plan of

<sup>1</sup> According to the historian Campbell, the General Assembly never expressed a desire for the settlement of a Bishop in Virginia. He attributes the failure of that body to do so to the popular recollection of the cruelties practised by the English prelates in the past, but the omission was much more probably due to a natural reluctance on the Assembly's part to increase the public burdens by having to vote a large annual salary for the maintenance of such a dignitary. In 1697, Nicholas Moreau, in a letter to the Bishop of Coventry, urged the appointment of a Bishop for the Colony, but the suggestion seems to have made no impression; see Perry's *Hist. Coll. American Colonial Church, Va.*, p. 31.

<sup>2</sup> Hening's *Statutes*, vol. ii., pp. 31, 34.

securing an annual supply of pastors for the Colony, which seems to have been a practicable one, was apparently never acted on.<sup>1</sup> It was a fit of disappointment, following, perhaps, upon the indifference shown in England when some such scheme as this was broached, which led Thomas Ludwell, in the course of the same year, to write to Secretary Arlington:—"I could heartily wish that my Lord of London and other great clergymen would take us a little more into their care for our better supply, since ye utmost of our encouragement will invite none to us."<sup>2</sup>

In 1680, the Council requested the Governor, as the only hope of filling all the pulpits of Virginia, to beg the Bishop of London to furnish the vacant parishes with "able, godly, and orthodox" ministers, of whom four should be sent over-sea by the very next shipping, and not less than two dispatched every year thereafter.<sup>3</sup> Half a decade later, Fitzhugh declared that there still existed in the Colony a pressing need for "able, faithful, and sober pastors."<sup>4</sup> During Nicholson's administration, some years later, a determined effort was made to procure such pastors from England; and so great was that Governor's zeal as a churchman that he cheer-

<sup>1</sup> *Virginia's Cure*, p. 10, Force's *Hist. Tracts*, vol. iii.

<sup>2</sup> Letter of Ludwell, Sept. 17, 1666, Winder Papers, vol. i., p. 209.

<sup>3</sup> Colonial Entry Book, 1680-95, p. 45.

In 1680, each of the three parishes in Nansemond was occupied by a minister. Of the four parishes in York, but one was vacant; of the four in New Kent, none; and the same was true of Gloucester. On the other hand, there was only one minister to supply the four and a half parishes of Charles City county, and only two the four and a half parishes of James City. Lancaster and Northumberland were each divided into two parishes, and there was but one minister in each county to supply them; and this was also true of Stafford, Warwick, and Henrico, the last of which counties was divided into one and a half parishes. British Colonial Papers, vol. ix., No. 410.

<sup>4</sup> Letters of William Fitzhugh, May 18, 1685.

fully bore all the expenses of a newly arrived clergyman until, on his earnest recommendation, the vestry of some vacant parish extended this clergyman a call.<sup>1</sup> Writing in 1697, Commissary Blair stated that there were then only twenty-two ministers to look after the spiritual interests of fifty parishes; the explanation of which great disproportion was to be found in the fact that a considerable number of these parishes were too impoverished to support a separate pastor.<sup>2</sup> Only three years later, Nicholson declared that there was still room in Virginia for six or eight additional divines; but that, although the want was one keenly felt, the people appeared to be extremely averse to the appointment of any more Scotch or very young clergymen, for there were several of both sorts, he added, "who hath caused a great dissatisfaction in ye country."<sup>3</sup> Nicholas Moreau has recorded that the ministers of Virginia at this time were, for the most part, Scotchmen, a fact due quite probably to the influence of Commissary Blair, who belonged to that nationality.<sup>4</sup>

One of the reasons most strongly and persistently urged for the foundation of the institution afterwards known as William and Mary College was that it could be made a "seminary for a Church of England ministry," the principal argument, as we have seen, so earnestly advanced in 1661, when a similar project was under discussion. Now, as at that earlier date, no native Virginian could legitimately act as a clergy-

<sup>1</sup> Blair's Memorial, Perry's *Hist. Coll. Amer. Colon. Church*, vol. i., p. 11.

<sup>2</sup> Perry's *Hist. Coll. Amer. Colon. Church*, vol. i., p. 11.

<sup>3</sup> Letter of Nicholson, May 27, 1700, Fulham Palace, Unbound MS. relating to Virginia.

<sup>4</sup> Letter of Moreau to Bishop of Coventry, Perry's *Hist. Coll. Amer. Colon. Church*, vol. i., Virginia, p. 31.

man unless he had been regularly ordained, and this could only be accomplished by a voyage to England, a journey which, from the heavy expense it imposed, would have always discouraged many young men, born and residing in the Colony, from turning to the study of theology with a view to a calling in life. As early as 1643, the General Assembly passed an Act declaring that no pastor should be allowed to officiate in Virginia who was unable to produce a testimonial to prove that he had received ordination from some Bishop in England. The object of this law was asserted to be to preserve the doctrine and discipline of the Church in its original purity and unity, and to insure the proper administration of the Sacraments. It was again enacted in 1662.<sup>1</sup> Thomas Ludwell, a man thoroughly informed as to the ecclesiastical affairs of the Colony, writing in 1666, stated that no one was permitted to perform all the functions of a minister of the gospel in Virginia who was not in orders.<sup>2</sup> As a rule, the clergymen securing charges there had been ordained by the Bishop of London, as the Colony had from its foundation been subject to the jurisdiction of that see.<sup>3</sup> In the instructions received by Howard on his appointment to the Governorship, he was expressly forbidden to prefer a minister to a benefice unless he could present a certificate over the Bishop of London's signature testifying to the fact that he was "conformable to the doctrine and discipline of the Church of Eng-

<sup>1</sup> Hening's *Statutes*, vol. ii., p. 46.

<sup>2</sup> Ludwell to Lord Arlington, Winder Papers, vol. i., 209.

<sup>3</sup> Ludwell to Lord Arlington, Winder Papers, vol. i., p. 209; see also British Colonial Papers, vol. xx., Nos. 125, 125, i. The Bishop of London's jurisdiction was due to the fact that Virginia was originally colonized by the London Company.

land"; and that, in his life and conversation, he was not open to the accusation of "ungodliness."<sup>1</sup>

In spite of these strict regulations, irregularities in appointments sometimes crept in, owing to the constant demand for clergymen to fill the vacant pulpits of the Colony. In 1680, Jonathan Davis, although not a qualified minister, "assumed to himself the liberty of the pulpit" in Poquoson parish, which really belonged to the Rev. John Wright; and the dispute between them was only settled by its reference to the Governor and Council sitting as an ecclesiastical court.<sup>2</sup> George Hudson, in 1695, was severely reprimanded by the same court because he had failed to secure a license from the Bishop of London authorizing him to preach, but as he was able to show that his ordination was strictly correct, he was not deprived of the right to serve as a pastor.<sup>3</sup>

A very common way of supplying the want of a clergyman in a vacant parish was to appoint a deacon. Godwyn, who seems to have judged everything relating to the church in Virginia with a prejudiced eye, in consequence of his indignant disapproval of the vestries' independent spirit, wrote with scorn of these "lay priests of the vestries' ordination," who, he asserted, made up nearly two thirds of the whole number of

<sup>1</sup> Instructions to Howard, Colonial Entry Book, 1685-91, p. 33.

<sup>2</sup> Minutes of Council, June 23, 1680, Colonial Entry Book No. 86.

"Whereas one Mr. David Richardson, our late minister, for want of orders was found not orthodox, and, therefore, we hired him from year to year (to supply the place of minister so far as the laws of England and this country could make him capable) until we could supply ourselves with an able, orthodox divine, and forasmuch as Mr. Isaac Key did present etc, this writing to certify him to the Governor for induction."—Northampton County Records, vol. 1674-79, p. 137.

<sup>3</sup> Minutes of Council, April 15, 1695, Colonial Entry Book, 1680-95.

pastors residing in Virginia. "They are the shame and grief of the rightly ordained clergymen," he exclaimed, "deacons to undermine and thrust out Presbyters, to administer Sacraments, and to read the Absolution."<sup>1</sup>

During the last decade of the century the see of London was represented in Virginia by a Commissary. The object of such a dignitary's appointment was, according to the English law, to supply the Bishop's office in the outlying parts, situated within his jurisdiction, which the prelate himself could not conveniently reach. The Commissary, however, did not possess the power either of ordination or confirmation, and his principal duty consisted simply of making visitations to the different parishes and reporting to his superior his conclusions as to their needs.<sup>2</sup> Previous to 1690, the Bishop of London had been represented in the Colony by Rev. William Semple, who, however, had received no regular commission.<sup>3</sup> In 1690, Rev. James Blair was appointed the first Commissary<sup>4</sup>; he had arrived in Virginia five years earlier, had first settled in Henrico county, but later on had become the incumbent of the pulpit at Jamestown, which he continued to hold while filling the representative office.<sup>5</sup> Blair was by birth a Scotchman, and had received his education in a Scotch University. His salary amounted annually to one hundred pounds

<sup>1</sup> *Godwyn's Negro's and Indian's Advocate*, p. 167 et seq.

<sup>2</sup> Hawks, p. 73.

<sup>3</sup> Campbell's *History of Virginia*, p. 345.

<sup>4</sup> His Commission was read in Council, June 4, 1690; see Colonial Entry Book, 1680-95, p. 354. A circular letter of Nicholson, addressed to every sheriff in the Colony, informed them that, in the spring of 1691, Blair would make a visitation to the different parishes; Colonial Entry Book, 1680-95. This letter was dated, 1690.

<sup>5</sup> Orders, April 26, 1695, Colonial Entry Book, 1680-95.

sterling payable out of the fund of the quit-rents,<sup>1</sup> but it seems to have been received irregularly, for, in 1698, a warrant, signed by the Governor, was delivered to the Auditor requiring him to pay four hundred pounds sterling to Mr. Blair, the sum due for the preceding four years.<sup>2</sup>

Blair, though able and aggressive, failed to invest the position of Commissary with any real power or influence. The Bishop of London acknowledged that the people of Virginia were, on the smallest occasion, disposed to contemn and slight his representative's authority; and this prelate was, therefore, made the more solicitous that the Commissary should continue to occupy a seat in the Council as a means of securing for him a larger degree of popular consideration and respect. His characterization of Blair as a "discreet man who would give no offense" does not appear to have been very discriminating, for Blair had not been long settled firmly in his office before he came into violent conflict with Nicholson on the subject of the claim made by the latter that he, (the Governor,) was the mouthpiece, not only of the King, but also of the Bishop of London in the Colony,—a claim that official based on a statute passed as early as 1643, at which time there could have been no representative in Virginia, save the then Governor, of the head of the diocese.<sup>3</sup> Blair also undertook to interfere in several cases of

<sup>1</sup> B. T. Va. Entry Book, vol. xxxvii., p. 261; see also B. T. Va., 1698, vol. vi., p. 347.

<sup>2</sup> The payment was made by express orders of the King, and covered a period ending July 11, 1698; Minutes of Council, Feb. 25, 1698, B. T. Va., vol. liii.

<sup>3</sup> See Letter of Bishop of London to Sir Philip Meadows, B. T. Va., 1698, vol. vi., p. 339; McIlwaine's *Struggle for Religious Toleration in Va.*, p. 9.



moral offenses, such, for instance, as incestuous marriages, which came within the ecclesiastical jurisdiction of the ordinary courts. Promptly called before the Governor and Council, he was rebuked, and the cases were referred to the courts for prosecution.<sup>1</sup>

<sup>1</sup> See *Memorial of Virginia Clergy*, dated sometime after 1693, an imperfect paper at Lambeth Palace, Cod. Misc. No. 954. On one occasion, while Blair, who was then the incumbent of the pulpit at Jamestown, was suffering from a severe attack of sickness, the churchwardens of the parish requested Governor Andros to procure a qualified minister to fill the place temporarily. Andros not only consented to do this, but also expressed his willingness to remunerate the substitute out of his own pocket. It was claimed afterwards that Blair gave his leave to the new appointment, but if so, he soon changed his mind, for he was reported as saying that neither the King nor the Governor had, under these circumstances, the authority to appoint a clergyman to preach; and that it might be of as ill consequence as it was in the reign of King James. Not content with speaking thus, Blair declared that it was entirely unnecessary for a clergyman seeking a parish in the Colony to produce to the Governor the certificate of his ordination. For these bold utterances, he was temporarily suspended; Orders April 26, 1695, Colonial Entry Book, 1680-95.

## CHAPTER XIII

### The Clergy: Their Tenure

THE right of induction belonged to the Governor. This power was conferred by an Act of Assembly passed as early as 1643, and it was reconferred by an Act passed in 1662. In the instructions given to Nicholson when appointed to the highest office in Virginia in 1698, the authority to collate to benefices was granted to him just as it had previously been granted to Howard and Andros.<sup>1</sup>

The vestry, on the other hand, possessed the right to choose a minister for their parish and to present him to the Governor for induction. In England, the right to choose and present lay, not with the vestry, but with the patron of the living, who might be either a person or a corporation, like one of the great Universities. Only during the brief existence of the Proprietary form of government established in Virginia by the temporary grant to Arlington and Culpeper was the power of presentment withdrawn from the vestry and reserved, somewhat as in England, to special individuals, who, in this case, happened to be the Proprietaries themselves.<sup>2</sup> Practically, throughout the

<sup>1</sup> B. T. Va., vol. vii., p. 168; see also B. T. Va. Entry Book, vol. xxxvi., p. 112.

<sup>2</sup> Randolph MS., vol. iii., p. 320. The Act of 1643 declared that it

Seventeenth century, the vestry was the controlling power in filling the vacant pulpits; and, as we shall see, they, in no small measure, by a boldness unknown in the ecclesiastical history of England, really emancipated themselves from the undoubted right of the Governor to induct.

The most important of all the early Acts of Assembly touching the vestry's power to present for induction a clergyman of their own election was that of 1643, in which it was declared that they should have the authority to choose their own minister with the approval of the commander and justices of the county court, if residents of the parish; but if not, without such approval. This last provision was, no doubt, in most cases nominal, as each parish of a county, even when there were as many as three parishes, is likely to have included among its inhabitants at least one third of the members of the county bench. The statute of 1643 probably conferred on this body a power which had previously perhaps been only exercised by the inhabitants of the parish at large, for in 1640 it is recorded that the people of Lower Norfolk assembled and chose Mr. Thomas Harrison as their minister.<sup>1</sup> After the passage of the Act, the vestry alone, in some instances certainly, made the original choice and continued

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should be "lawful for the Governor for the time being to elect and admit such a Minister as he shall allow in James City parish, and in any parish where the Governor and his successors shall have a plantation; provided that he or they shall enjoy that privilege only in one parish where he or they shall have such a plantation"; Acts of 1642-3, MS. Clerk's Office, Portsmouth, Va.

<sup>1</sup> Hening's *Statutes*, vol. i., p. 242. The words of the statute are: "choose ministers who are to be recommended to the Governor and so by him admitted." See also Lower Norfolk County Records, Orders May 25, 1640.

to do so, but not without regard to public endorsement, as many cases show. In 1649, in Lower Norfolk, for example, Sampson Calvert was selected, with the approval, as the law required, of the commander and the members of the county court, and also, it would appear, with the full consent of every freeman residing in the parish.<sup>1</sup> It is possible that, after a selection had been made by the vestry, the name of the clergyman was submitted informally to the consideration of the parishioners, without, however, there being necessarily any legal obligation to do so. In 1655, James Doughty was chosen in this more or less popular manner in Northampton county; and, in 1657, Samuel Cole, in Lancaster, apparently by the popular voice alone.<sup>2</sup> Not in-

<sup>1</sup> Lower Norfolk County Records, vol. 1646-51, p. 115; Lower Norfolk County Antiquary, vol. ii., p. 63.

<sup>2</sup> Northampton County Records, vol. 1654-55, p. 117; Lancaster County Records, vol. 1654-1702, p. 141. The following is interesting as showing the terms of an ordinary contract between a clergyman and his parishioners: "Agreement made and concluded at ye house of Mr. Henry Corbyn on the 17th of November, 1657, between Samuel Cole, clerk, and ye major part of ye inhabitants of ye p'sh of Lancaster in Rappah River, sheweth imprimis that ye said Samuel Cole doth promise, agree, and engage with ye sd p'sh of Lancaster to serve them in ye office and function of minister every other Sabbath so long time as he shall remain in ye Colony; that he will fulfil, p'form, and duly officiate all Christenings, burials, marriages, churchings, and whatsoever else is proper to his office and ministry in ye sd. parish. It is agreed and concluded by ye Samuel Cole and ye major part of ye inhabitants now mett together that a church shall be built with all convenient speed on Mr. Boswell's Point, and that ye vestry now made choice of shall take care for effecting ye same. Lastly, it is agreed and concluded ye sd inhabitants of ye p'sh of Lancaster aforesaid to pay unto ye sd Samuel Cole ye full sum of four thousand pounds of tobacco in cash yearly, and every year so long as ye sd Saml. Cole shall serve and officiate in ye office and function of minister in ye sd p'sh; likewise to agree with ye inhabitants of ye p'sh for ye settling of a glebe and buying a house for ye sd Mr. Cole's better conveniency

frequently, the vestry would elect a candidate whose merits had been warmly recommended by the Governor; such were the circumstances under which Samuel Eborne was, in 1688, advanced to the assistant rectorship of Bruton parish, but the vestry was careful to limit his term to seven years; and just before this period expired, they passed a resolution fixing one year as the time to be covered by the incumbent's term thereafter. Reelected on this basis, Eborne declined to accept the position.<sup>1</sup>

In a new country like Virginia, it was impossible for such a system as that governing the appointments to livings in England to spring up. There was no influence accompanying the division and settlement of the virgin soil (so long at least as the community was subject directly to the Crown), to create a circle of patrons,—such as had existed almost immemorially in the Mother Country,—in whose disposal every benefice in the Colony would rest. Had there been, as time went on, any influence at work to create such a circle, it would have been anticipated by the necessity, which arose almost in the very beginning, of leaving the choice of the minister to some public body like the vestry; and once this right had been secured by

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to officiate and serve both p'rishes of Lancaster and Pianketank; for ye p'formance hereof ye sd. Saml. Cole and those underwritten by consent as aforesaid have interchangeably subscribed ye Day and year above written."

"SAML. COLE.

"The Underwritten, chosen for vestrymen of Lancaster Parish, Peter Montague and 13 others."

See Lancaster County Records, vol. 1654-1702, p. 141.

<sup>1</sup> Meade's *Old Churches, Ministers, and Families of Virginia*, vol. i., pp. 148-9, Phila. edition, 1889. The reason given by Eborne for declining was the state of his health.

such a body, there was no probability that it would pass to separate individuals resembling the patrons of the English benefices, however wealthy and influential. Each vestry acquired the power to appoint its own minister; the next step was to appoint him, should they so desire, only from year to year; and this every vestry was able to accomplish by refusing to present him to the Governor for induction, for, as soon as inducted, the minister could claim a life tenure in his pulpit, and like the English clergyman occupying a living by his patron's gift, he became at once independent, from a legal point of view, of his congregation's favor or disfavor. He could be suspended by the Governor and Council sitting as an ecclesiastical Court, for neglectful and unbecoming conduct, but could be removed only by an Act of the General Assembly.<sup>1</sup>

It is no reason for surprise that the custom prevailing so generally in the Colony of placing the minister as it were, on probation from year to year by refusing to present him to the Governor for induction, should have excited the hostile criticism of all the persons anxious to establish universally in Virginia the English freehold tenure simply because it would have made every clergyman practically independent of his vestry. Godwyn, with characteristic intemperance, described this body as a "plebeian junta"; and the expression in common use "to hire a divine" stirred in him extraordinary indignation. He accused the Virginians of seeking, by the appointment of lay readers, to evade the support of regular ministers as a heavy charge on their purses; and declared that, where a pulpit was occupied, the parishioners treated the minister "how they please, paid him what they list, and discarded

<sup>1</sup> Hening's *Statutes*, vol. i., p. 242.

him whenever they had a mind to it." "All things that concern the Church and religion in Virginia," he exclaimed, with increased bitterness, "are delegated to the mercy of the people."<sup>1</sup>

However wide of the mark, according to our modern ideas, may appear Godwyn's heated attack upon a manner of engaging and remunerating divines which has continued, from that day to this, to be followed in our country, there can be no doubt, that the probational tenure of most of the clergymen in the Seventeenth century was the chief reason for a fact which often appears inexplicable in the light of the substantial advantages the Colony had to offer throughout that period, namely, the reluctance of the English divines to emigrate thither. Godwyn declared that the Virginians were the enemies of the clerical profession; and the same impression was unquestionably widespread among members of the calling in England, simply because, owing to the clergymen's forced dependence on the vestries, they were supposed to be in a state of absolute servitude. The evil consequences of the probational tenure from the minister's point of view are clearly stated by several writers. Blair, for instance, asserted that it prevented divines of superior talents from either coming to Virginia at all, or, after they had once arrived, remaining there long; that it discouraged the clergyman from improving his glebe, or even purchasing a plantation of his own; that it diminished his ability to intermarry with a woman of the better sort; and finally, that it had a

<sup>1</sup> Godwyn's *Negro's and Indian's Advocate*, p. 167 et seq. Morryson, who was sent, in 1675, to England as one of the Colony's agents to secure a new charter, denounced Godwyn's pamphlet as a "virulent libel," and Godwyn himself as a "fellow" and an "inconsiderable wretch"; Neill's *Va. Carolorum*, p. 343.

tendency to cultivate in him a mean, base, and mercenary spirit, because any reflection upon vices which members of his vestry might be addicted to might raise up a faction opposed to continuing him in his place.<sup>1</sup>

The authors of *The Present State of Virginia, 1697-8*, offered almost precisely the same objections:—they declared that the probational tenure kept out of Virginia all the superior persons among the English clergy who were fully informed of it, and that those who came over in ignorance of such a custom, soon had reason to regret their settlement over-sea owing to the high hand shown by the vestries in using their power; that the ministers residing in the Colony, having only a precarious hold on their pulpits, felt no interest either in keeping their parsonages in repair, or in improving their glebes; and that they were unable to attack every form of vice for fear lest they might unintentionally offend some influential member of the vestry. Practically, the clergyman was simply a chaplain whose tenure of his living was dependent on an annual agreement renewable at the option of a small body of men.<sup>2</sup>

It was natural that the Bishop of London for the time being should be greatly impressed by these arguments. In 1698, the then prelate, in a letter addressed to Sir Philip Meadows, touching instructions to Governor Nicholson, declared that the Virginians often took a minister on trial, but from year to year failed to present him, thus depriving him of all legal claim to the payment of his salary; and that they also

<sup>1</sup> Blair's Memorial concerning Gov. Andros, 1697, Perry's *Hist. Coll. Amer. Colon. Church, Va.*, vol. i., p. 15.

<sup>2</sup> *Present State of Virginia, 1697-8*, Section xi. It is probable that Blair wrote this section.



gave the vestry the power to discharge him, should they see fit to do so. Information of this state of absolute dependence coming to England, divines of "ingenuity" were unwilling to place themselves in it, and, therefore, declined to emigrate to Virginia to fill the unoccupied pulpits. As a remedy for the supposed evil, the Bishop proposed that the Governor of the Colony should be empowered to collate to a vacant place immediately upon a lapse, the appointment to be made subject to the Bishop's confirmation or rejection within a period of six months, and to the King's without any limit as to time. As if he thought there might after all be some practical reason for the vestries' reluctance to present ministers for induction, he, in concluding recommended that the probation of a clergyman who had gone out to Virginia, and found employment there, should be restricted to one year; and if, at the end of that time, he afforded satisfaction, his tenure should be made permanent by induction.<sup>1</sup>

No official in the Colony is more likely to have sympathized with the views of those favoring the rigid enforcement in Virginia of a universal rule of presentment and induction than the Governor. It was to his interest to respect and support the Bishop of London's wishes to the utmost; and it would have been only natural also had he shown a determination to retain his right of induction in every case. Although the Governor possessed the power of inducting of his own motion a minister whom the vestry had deferred presenting, there is no instance recorded of his having exercised this power; and this fact is only explicable on two hypotheses: first, he was afraid, for political

<sup>1</sup> Letter of Bishop of London to Sir Philip Meadows, Aug. 11, 1698, B. T. Va., 1698, vol. vi., p. 339; see also June 20, 1698, p. 287.

reasons, to interfere with the vestries' freedom; or, secondly, he was convinced that, in making the tenure probational, these bodies were acting with necessary prudence and caution. It is quite probable that this was the opinion entertained by all the Governors<sup>1</sup>; and if so, it seems to have been well grounded, although the undoubted effect of the uncertain tenure was to discourage the emigration of English clergymen to Virginia.

The principal reason for the growth of the custom of employing a minister from year to year on a salary annually agreed on, instead of presenting him at once for induction, which would have given him a permanent legal claim to his living and the payment of his dues, was that the vestry was thus able to protect the parish against the appointment of men who might, after a short experience, prove either intellectually unfit or morally unworthy. It should be remembered that the persons filling the pulpits during this early period were natives, not of Virginia, but of England, and that when they settled over-sea, they had still their personal reputations to make there. A very large proportion, when they left the Mother Country, were still so young that they had hardly had time to attain a standing which, before their arrival, might have been favorably reported in the Colony by Virginians returning home from England. At best, these emigrating clergymen

<sup>1</sup> Culpeper, in his report dated 1681, wrote: "The Parishes paying the minister themselves have used to claim the right of presentation whether the Governor will or not, which must not be allowed, and yet must be managed with caution"; Campbell's *History of Virginia*, p. 331. If Culpeper, who was by no means politic, felt it necessary to be circumspect in dealing with the subject and to advise prudence on the part of the English authorities in interfering, it was likely that the other Governors would show even greater reserve.

could only show certificates from the Bishop of London to the effect that they had led lives free from every form of licentiousness, but whether these documents really reflected their true dispositions was a question which the vestries might well have desired to leave to the test of time. Had the men occupying the Virginian benefices in the Seventeenth century been drawn entirely from the Colony; had they first seen the light and passed their whole previous existence there, a fact which would have given an opportunity to all to understand their characters and weigh their conduct before they were called to the sacred responsibilities of the pulpit, it is quite probable the probational tenure, so much complained of by ministers of English birth, would never have been gradually introduced, or at least would never have become so general. Certainly, the objection to that custom entertained by divines educated in England would never have been advanced so earnestly by them had they been natives of the Colony. Had they been sons of the foremost citizens and relatives of all the leading families of their parishes, and reared in the Colony from their earliest childhood, they would have felt that they could rely on their vestries with implicit confidence for just treatment because that treatment would have been largely influenced by long-standing kindness for themselves personally.<sup>1</sup> The clergyman from England was in a very different situation from this: he entered the com-

<sup>1</sup> They would have been disposed to accept such a tenure the more readily because they would have been accustomed to hearing of it from early childhood. Much of the opposition shown by the clergyman of English birth arose from the fact that he had been familiar with a different system; and English pertinacity in clinging to what was deemed to be a right was also partly accountable for this opposition.

munity as a stranger to all, without one tie of blood to bind him to any family in his parish; his moral disposition yet to be discovered, and his intellectual capacity yet to be tried. If he was to win his vestry's goodwill, he was to do so by the force of his own individuality entirely disassociated from all those extraneous influences which would have played such a part in his favor had he been a native of Virginia.

As a matter of fact, the whole character of the probational tenure was well adapted to foster in a clergyman all those qualities most urgently required in a man in his position. He was made by it more energetic, more faithful, and more circumspect in his conduct; and when a pastor on trial exhibited all these qualities, there is no reason to think that he had any ground of complaint. Beverley, who understood thoroughly the sentiment of the clergymen towards the close of the Seventeenth century, states that the only grievance of which they were heard to speak was the precariousness of their livings, but that even this was no real cause for dissatisfaction, as it was rare that one was dismissed without having been guilty of some provocation not to be condoned; and that when discharged, unless his life had been "abominably scandalous," he found no difficulty in securing at once another benefice owing to the eagerness of every vestry, should the pulpit of their parish be vacant, to engage a minister to fill it. No qualified clergyman, he added, ever returned to England for want of preferment in Virginia.<sup>1</sup>

In their reply to a memorial of the Clergy submitted to Governor Andros in 1696, the House of Burgesses declared that the inhabitants of the Colony held a pastor of "good life and conversation" in the highest esteem;

<sup>1</sup> Beverley's *History of Virginia*, p. 213.

and that so far from being addicted to disagree with such a one, they were disposed to make use of every inducement in their power to retain him. No pastor, they asserted, was really hopeless of obtaining induction; and it was only reasonable, they added, that a vestry should be well satisfied before taking a step which would give their clergyman a free-hold in his benefice.<sup>1</sup>

The minister failing to secure induction enjoyed, by force of his agreement with the vestry, all the pecuniary advantages possessed by one who had been inducted.<sup>2</sup> Apart from the uncertainty of his tenure, which, as

<sup>1</sup> B. T. Va., vol. vi., p. 108. The statement made by the House of Burgesses that induction was not uncommon is confirmed by the testimony of Beverley in his *History* (p. 213), and also by various entries in the records. Clergymen known to have been presented for induction were Isaac Key, of Northampton County (see vol. 1674-9, p. 137); Benjamin Doggett, of Lancaster (Robinson Transcripts, p. 257); and Jacob Ware of St. Peter's parish in New Kent (see Orders of Council, March 23, 1692, Colonial Entry Book). Among the ministers who became involved in controversies with their vestries were Rev. Cope Doyley and Rev. John Monro. In 1695, Doyley, who was the incumbent of Denbigh parish in Warwick county, having been shut out of the church by one of the churchwardens and the late clerk, appealed for redress to the Governor and Council. The churchwardens could show nothing against him; on the contrary, it was proven that for several years past Doyley had borne himself well in his life and faithfully in his ministry; and the Board therefore recommended him for continuance (see Minutes of Council, Febry. 13, 1695, B. T. Va., vol. liii.). Rev. John Monro, of St. John's parish, King and Queen county, having charged the vestry with nailing up the door of his church (1695) to bar him out, they stated in their own defense to the Governor and Council, before whom they had been summoned, that they had done this only to keep out the cattle, and that the door was not opened when Monro attended to perform service, because they thought the parish vacant. Minutes of Council, May, 1695, Colonial Entry Book, 1680-95.

<sup>2</sup> Meade's *Old Churches, Ministers, and Families of Virginia*, vol. i., pp. 367, 368, Phila. edition, 1889.

we have seen, was practically removed by faithful conduct, the average clergyman in Virginia was in a better position, from a worldly point of view, than the average member of his calling residing in the rural districts of England. It is true that he was shut out from all hope of preferment, a hope that exercised a powerful influence in restricting the emigration to the Colony of the most talented and ambitious young men who had obtained orders, but in place of a mere aspiration for advancement, which, with the majority of those entertaining it in the Mother Country, proved entirely illusory, there were numerous solid advantages every clergyman in Virginia bearing himself decently, was absolutely sure of acquiring.<sup>1</sup> Not only could he rely with confidence on securing a benefice, something which the English divine was by no means certain of, but the remuneration for his services taken as a whole, —salary, parsonage, glebe, and perquisites,—was such as to relieve him of all anxiety about the support of his family. Moreover, there does not appear to have been any public sentiment hostile to his undertaking to increase his income by producing tobacco for his own profit on an estate he had either rented or purchased. In a community in which a successful planter enjoyed the highest degree of consideration, it was not

<sup>1</sup> An unbound MS. among the Fulham Palace Collections entitled *Propositions to Improve the Clergy of Virginia* has the following to say about the effect on that clergy of the absence of preferments: "By means of their equality, they, *i.e.* the Virginia livings, are very ill calculated to distinguish and encourage men of parts and diligence, who ought to be spurred on by hopes of better preferment, and not left to fare equally with the most negligent and blockish." The writer of this paper declared that it was more satisfactory for a clergyman to receive £40 salary in England, where the benefice was sure and there was a hope of promotion, than £80 in Virginia, where the tenure was uncertain, and there was no hope of advancement.

at all improbable that the minister showing great talent as a manager found that, instead of this fact diminishing his influence as a pastor, it enabled him to push his moral homilies in the pulpit all the more closely home. Having ocular proof of his capacity to grow tobacco better than most of his neighbors, his congregation would perhaps have been the more inclined to repose confidence in his knowledge of his real calling.

## CHAPTER XIV

### The Clergy: Their Remuneration

A STATED salary was paid the clergyman from a very early period in the Seventeenth century.

In the instructions which Governor Yeardley received from the Company in 1618, before going over to Virginia, he was ordered to see that, for the maintenance of the incumbent of every living in the Colony, contributions in one form or another equal in amount to two hundred pounds sterling (five thousand dollars in purchasing power) should be raised annually out of the profits of the different farms situated within the bounds of his charge; and should good reason for it arise later on, that this sum was to be increased.<sup>1</sup> This income was to be exclusive of what he could obtain by the cultivation of a glebe of one hundred acres attached to his parsonage. When, the same year, the Company dispatched over-sea a clergyman to officiate in the Colony, they granted him, not only a salary of forty pounds sterling a year, but also fifty acres of land in fee simple.<sup>2</sup>

Extraordinary pains were taken to ensure the payment of the minister's salary. The first Assembly

<sup>1</sup> Instructions to Yeardley, 1618, *Va. Maga. of Hist. and Biog.*, vol. ii., p. 158. An Act to this effect was passed by the first Assembly.

<sup>2</sup> Abstracts of Proceedings of Va. Co. of London, vol. i., p. 12.



convening in Virginia adopted measures directed towards that end; and a few years later, the same body passed an Act requiring that no planter should dispose of his tobacco crop before the share of it due the clergyman of the parish had been delivered, and that, if he disobeyed this command, he should forfeit double the amount of that share. As if they deemed this by itself an insufficient protection of the clergyman's interests, the Assembly provided for the appointment of special officers, upon whom was imposed the duty of collecting his salary out of the "first and best corn and tobacco" that should be gathered.<sup>1</sup> No one could claim exemption from the payment of his proportion of the levy for the minister's support. Those persons who were settled in Virginia before Sir Thomas Gates's last arrival were relieved of the burden of all other public charges, but they were required to pay the church dues, including the minister's salary, just as if they were so many citizens who had come in only within the last few months.<sup>2</sup> The very members of the Governor's Council, who enjoyed such an extraordinary privilege in the way of freedom from public taxation, were expected to contribute their share to the clergyman's maintenance.<sup>3</sup> And the like was also exacted

<sup>1</sup> Hening's *Statutes*, vol. i., p. 124.

To ensure performance of duty by the clergyman, it was enacted that, should he absent himself without excuse from his church for a period exceeding two months, he should forfeit one half of his salary; and that if his absence extended to four months, he should forfeit, not only the whole of his salary, but also his living; Hening's *Statutes*, vol. i., p. 123.

<sup>2</sup> Laws of Assembly, Feby. 1623/4, British Colonial Papers, vol. iii., No. 9. Every person who worked in the ground, no matter what his 'quality or condition,' was, by this law, to be considered as a tithable; see Hening's *Statutes*, vol. i., p. 144.

<sup>3</sup> Colonial Entry Book, 1606-62, p. 223.

of the poor even when they were so disabled that the vestry of their parish had granted them certificates for presentation to the county court to secure relief from the county levy.<sup>1</sup>

A law adopted in 1623/4 fixed the clergyman's salary at ten pounds of tobacco and a bushel of corn for each tithable; and in 1631, it was enlarged by permitting him to claim every twentieth new-born calf, kid, and pig, a very important addition to his income at a time when all kinds of livestock were increasing with extraordinary rapidity. The tobacco and corn were to be delivered at whatever place he should designate as the one most convenient to him; and whoever failed to bring his share was to forfeit double the amount due.<sup>2</sup> The county court was especially jealous that these provisions for the minister's support should be strictly enforced. In 1632, Rev. William Cotton, of Accomac, complained to the justices of that county that the churchwardens, though often urged by him, had neglected to collect his tithes in full; the court at once responded by requiring warrants to be issued against all persons who had defaulted, by which they were compelled to pay twice as much in corn and tobacco as they were originally liable for.<sup>3</sup> And this was no uncommon instance.

By an Act of Assembly passed in 1632/3 for the establishment within the cultivated area of the Colony of a system of warehouses, to which the entire crop of

<sup>1</sup> Hening's *Statutes*, vol. i., p. 242.

<sup>2</sup> Acts of Assembly, Feb. 21, 1631/2, Randolph MS., vol. iii., p. 216. The provision about the calf, kid, and pig was repealed in 1633; see Hening's *Statutes*, vol. i., p. 221.

<sup>3</sup> Accomac County Records, vol. 1632-40, p. 11, Va. St. Libr.; see also p. 44 of same volume. See Northampton County Records, vol. 1651-54, p. 73, for case of Rev. Thomas Higby.

tobacco produced each year was to be brought previous to its shipment to England, the salaries of the clergymen were, before the settlement of any other debts, to be paid out of the quantity of that commodity thus annually collected; and authority was given them to appoint their own agents, who were, at the doors of these storehouses, to receive what was due.<sup>1</sup> A few years later, it would appear that each minister, out of his income derived from the tax of ten pounds of tobacco imposed on each tithable person, was expected to remunerate both the clerk and the sexton of his church.<sup>2</sup> In 1640, there was a special levy of one bushel of corn per poll allowed for these two officers' benefit, in addition to the fixed proportion of tobacco which the minister was required to pay them.<sup>3</sup>

Even at this early date, should there be a special reason for it, the minister's salary could be increased much beyond the sum designated by law; for instance, in 1640, the county court of Lower Norfolk gave directions that every tithable residing within the area of country situated between the plantations of Peter Porter and Captain Thomas Willoughby should contribute ten shillings, as well as twenty-four pounds of tobacco, towards the payment of the minister's dues.<sup>4</sup> This allowance, perhaps temporary only in character, was made the very year in which the General Assembly, in order, as was stated in the Act, to rectify the confusion growing out of the constant disputes between pastors and their parishioners over the subject of salaries, renewed the provision of one bushel of corn

<sup>1</sup> Acts of Assembly, February 1, 1632, Randolph MS., vol. iii., p. 223; Hening's *Statutes*, vol. i., p. 207.

<sup>2</sup> Hening's *Statutes*, vol. i., p. 226; Randolph MS., vol. iii., p. 230.

<sup>3</sup> Robinson Transcripts, p. 22.

<sup>4</sup> Lower Norfolk County Antiquary, vol. i., p. 141.

and ten pounds of tobacco per tithable, adopted some years before as we have seen, for the support of clergymen.<sup>1</sup> The tobacco was to be delivered November 20, and the corn, December 19; and two bushels of this grain unshelled were to be accepted as equal to one bushel shelled.<sup>2</sup>

The inhabitants of the parish in which the church at Sewell's Point was situated, in a contract with Rev. Thomas Harrison in 1640 agreed to pay him an annual salary of one hundred pounds sterling as long as he occupied that pulpit. The parish seems to have been laid off into three districts, in each of which several of the wealthiest citizens, acting for themselves and the remaining tithables, guaranteed the contribution of their proportionate share of this amount.<sup>3</sup> It shows the scrupulous regard for the clergymen's interests prevailing in the Colony at this time, that, whenever a pastor having two parishes was unable to attend to all his duties in consequence of the great area he had to traverse, he was nevertheless not permitted to suffer any diminution in his salary because the inhabitants were occasionally compelled to rely upon some other minister to baptize or preach.<sup>4</sup>

Again, in 1646, the vestry exercised the power of advancing the tax for the minister's support beyond the ten pounds of tobacco per tithable allowed by law, special authority for which had lately been granted by the General Assembly whenever a parish's population had been so cut down that the ordinary rate afforded the clergyman an insufficient maintenance.

<sup>1</sup> Robinson Transcripts, p. 22.

<sup>2</sup> Hening's *Statutes*, vol. i., p. 242.

<sup>3</sup> Lower Norfolk County Records, Orders May 25, 1640.

<sup>4</sup> Hening's *Statutes*, vol. i., p. 290. The words of the statute were "without prejudice to the incumbent."

In many parishes, there had been a large reduction in the number of inhabitants in consequence of the great massacre by the Indians which had recently taken place.<sup>1</sup> The vestry seems to have also possessed the right to increase the rate of payment in tobacco in consideration of not imposing at all the rate in corn; in 1649, by the provisions of the contract between Rev. Sampson Calvert and the vestry of Elizabeth River parish, that clergyman was to receive thirty instead of ten pounds of tobacco per tithable, but he was to give up his legal claim to the usual amount of grain. The use of a boat to transport him to his church every Sabbath was also assured him free of expense to himself.<sup>2</sup> Occasionally, the levy for the minister's support rose to fifty-three pounds per poll; but, in some of these cases, it is possible that there were arrears covering the whole of the previous year.<sup>3</sup>

The pecuniary advantages enjoyed by the clergyman were, in 1656, substantially increased by the exemption of himself and six of his servants from the payment of public dues.<sup>4</sup> This Act was renewed two years later. Thomas Teakle and Francis Doughty, the two ministers occupying the parishes on the Eastern Shore, having been taxed as usual, they succeeded, on the authority of this statute, in obtaining a full reimbursement; and when in the following year, the

<sup>1</sup> Hening's *Statutes*, vol. i., p. 328.

<sup>2</sup> Lower Norfolk County Records, vol. 1646-51, p. 115. In 1656, the levy in this parish for the minister's support had been reduced to fifteen pounds of tobacco per tithable; see Lower Norfolk County Records, vol. 1656-66, p. 33.

<sup>3</sup> The churchwardens of one of the parishes in Northumberland county were, in 1655, ordered to distrain for that amount; see Orders June 30, 1655.

<sup>4</sup> Randolph MS., vol. iii., p. 268.

regular levy was laid, their names were omitted.<sup>1</sup> In 1672, Rev. John Farnfold, of Fairfield parish, in Northumberland, paid for himself and five servants the rates imposed on all tithables; but on his making complaint to the county court, this body entered an order that the amount should be returned to him out of the proceeds of the next county levy.<sup>2</sup> The existing law was modified during the session of 1676, when, under the influence of the movement headed by Bacon, so many abuses relating to public taxation were corrected; it was then enacted that, in all future assessments, the clergyman could claim relief from the payment of public and county dues for himself, but, should there be other tithables in his family, he was as to them to be subject to the rule applicable to the ordinary citizen.<sup>3</sup> This provision had its origin in the idea that, when a clergyman was so easy in fortune as to possess a number of servants capable of adding by their work to his income, there was no reason why he should not bear at least such a share of the public burdens as would be in proportion to the product of these servants' labor. And this view seems to have been altogether equitable.

As a means of ensuring a support for the clergymen who should be induced to settle in parishes long re-

<sup>1</sup> Northampton County Records, vol. 1657-64, folio p. 26. Doughty complained, in 1660, that his tithes had not been delivered, and thereupon the county court issued an order that the inhabitants of his parish should assemble in their precincts, and that all who could not show a discharge should be required to make payment; Northampton County Records, vol. 1657-64, folio p. 66. The trouble in this county arose from its division into two parishes, which made it difficult for its people to support two preachers; see Records, vol. 1689-98, pp. 117-18.

<sup>2</sup> Northumberland County Orders, Aug. 21, 1672.

<sup>3</sup> Hening's *Statutes*, vol. ii., p. 357; see also vol. ii., p. 392.

maining vacant because impoverished, the General Assembly, in 1660-1, urged the vestries of these parishes, not only themselves to subscribe to the fund required, but also to use their influence to cause all other citizens of means to contribute as much as they could afford.<sup>1</sup> In the following year, it was expressly provided that the minister's salary should be paid in the country's "current commodities" in a quantity estimated to be worth as a whole not less than eighty pounds sterling. These commodities were to consist of corn and tobacco, —the corn to be rated at ten shillings a bushel, and the tobacco at twelve shillings a hundred pounds. It was always allowable for any one to pay his share of the minister's salary in the form of bills of exchange on England; but it is not probable that this was frequently done, although the permission was specially granted by the terms of the same statute.<sup>2</sup>

Thomas Ludwell, who had enjoyed the best opportunities of acquiring a thorough knowledge of the condition of the church in Virginia, declared in 1666 that there were few parishes failing to pay their incumbents each year an amount smaller than one hundred pounds sterling.<sup>3</sup> By the levy of Fairfield parish in 1679, not less than thirteen thousand, three hundred and thirty-three pounds of merchantable tobacco was assessed for the benefit of the Rev. John Farnfold, the divine who, at this time, was in the possession of that living.<sup>4</sup> At two pence a pound, the sum of tobacco which had to be raised for him was worth in the market about one hundred and eight pounds sterling, but it

<sup>1</sup> Hening's *Statutes*, vol. ii., p. 37.

<sup>2</sup> *Ibid.*, p. 45.

<sup>3</sup> Letter of Ludwell to Arlington, Winder Papers, vol. i., p. 209.

<sup>4</sup> Northumberland County Records, Orders Oct. 22, 1679; see also Oct. 20, Nov. 17, 1680.

was probably not quite so valuable as this. Only a few years afterwards, Culpeper, in his general report on the state of Virginia, declared that a living should carry with it a salary of at least eighty pounds sterling, but owing to the low price tobacco had fallen to, the fixed quantity allowed the minister would not then, as a rule, assure so large an amount. In those parts of the Colony where the variety of the plant known as Orinoko was cultivated, his salary at this time hardly exceeded forty pounds sterling a year; and in those parts where the sweet scented variety, a more profitable kind, was cultivated, sixty pounds. As soon, however, as the price of tobacco would rise, the clergymen's salary would assume its original proportions; and if that price went up above the average figure on which the original allowance was based, then the sum the clergyman would receive for his services would run very considerably ahead of eighty pounds sterling. At the time when Culpeper was writing, there were only four parishes in the Colony containing livings that paid the minister so large an amount; one of these was situated at Middle Plantation; two were situated in Gloucester county; and the fourth in Westmoreland. That the parish in Westmoreland was as lucrative as this, was, it seems, due in part at least to the private contributions or personal influence of its wealthiest and most distinguished citizen, Nicholas Spencer, the Secretary of the Colony and a zealous churchman; and the presence of citizens as powerful, affluent, and religious in the other parishes perhaps told equally to the advantage of the clergymen filling those livings.<sup>1</sup>

In 1684, the salary of Rev. James Porter, who oc-

<sup>1</sup> Report of Culpeper to Board of Trade, 1683, Colonial Entry Book, 1681-85, p. 174.



cupied one of the parishes situated in Lower Norfolk, was fixed at ten thousand pounds of tobacco and one hundred bushels of corn. As he died before the second year of his incumbency was completed, the vestry declined to pay his representatives more than seventy-five hundred and eighty-eight pounds of tobacco; but allowed six hundred pounds as a fee to the clergyman who preached his funeral sermon. A suit was entered by the executors for the additional amount required to make up a whole year's salary; and it shows the disposition of the county courts to favor the minister's cause, unless patently wrong, that this claim was approved after the cost of the funeral sermon had been deducted.<sup>1</sup> Rev. Thomas Teakle, of Northampton, seems to have received the same salary.<sup>2</sup>

Fitzhugh, writing in 1690, ventured the statement that the salary at that time paid a clergyman in Virginia was "large and comfortable"; and that twenty pounds sterling, or its equivalent in tobacco, was always granted the newly arrived minister to reimburse him for the expenses entailed by his voyage from England.<sup>3</sup> The clergy of the Colony, in an address to the English authorities, the following year, did not give so favorable a character to their condition, although it is not improbable that they were seeking to make out as bad a case for themselves as they could

<sup>1</sup> Lower Norfolk County Records, Orders Nov. 17, 1684. In 1655, Capt. Willoughby was authorized by one of the parishes of Lower Norfolk County to secure a minister at an annual salary of ten thousand pounds of tobacco; see Lower Norfolk County Antiquary, vol. iii., p. 33.

<sup>2</sup> In 1688, Teakle entered suit for the payment of the combined salaries due him for 1684 and 1685, equal in amount to twenty thousand pounds of tobacco; Northampton County Records, vol. 1683-89, p. 393.

<sup>3</sup> Letters of William Fitzhugh, Aug. 20, 1690.

without stretching the truth too far. They declared that by law they were entitled to a salary of eighty pounds sterling, payable in tobacco at the rate of twelve shillings per hundred pounds of that commodity, which would bring the amount due them to twelve or thirteen thousand pounds. Instead, however, of the hundred pounds being worth twelve shillings, as it was at the time the salary was fixed, it was worth only six, owing to the enormous increase in the quantity of tobacco produced following upon the growth of the native population, and the large importation of negroes, all of whom were at once set to working in the fields. Many of the clergymen (so the address went on to say), finding that they could not live comfortably on the salary they received, had returned to England, and their representations had prevented ministers there, who had proposed going out, from emigrating in order to fill the vacant parishes.<sup>1</sup>

In their reply to this address, the Virginia Council merely asserted, what there is reason to believe was strictly true, that the condition of the Colony's ministers was as good as that of the body of the English clergy.<sup>2</sup>

William III, about 1691-2, evinced an extraordinary

<sup>1</sup> B. T. Va., 1691, No. 73. At a later date, as will be seen from a subsequent statement in the text, the Burgesses showed that the fluctuation in the prices of tobacco frequently operated very much to the clergymen's advantage; as frequently indeed, as to their disadvantage. An additional reason given in the ministers' address for the low price of tobacco at this time was the high customs in England, and the large quantity of the commodity produced on the Rhine and in other parts of Europe. The address was adopted "pursuant to ye earnest desires of the clergy at their general meeting in ye year 1690." Such was the statement made in a petition of the clergy to Andros in 1696; see B. T. Va., vol. vi., p. 105.

<sup>2</sup> April 24, 1697, B. T. Va., vol. vi., p. 81.

interest in the improvement of the Virginian clergymen's pecuniary condition; he not only directed the General Assembly to assure the payment to each of a competent salary, in the form of either coin or tobacco, but also ordered a special inquiry to be set on foot as to whether the numerous laws passed for their better maintenance had been carefully enforced.<sup>1</sup> By the provisions of the Act for Ports, one third of the tax imposed by that Act on all skins and furs exported was to be disbursed for the support and encouragement of a "learned and pious" clergy; and this object was to be accomplished by distributing the sum obtained from this source equally among all the persons following the clerical profession. Again, by the provisions of the Act for the suppression of drunkenness, swearing, and similar moral offences, one third of the amount accruing from the fines and forfeitures paid by the guilty persons was required to be devoted to the same purpose.

The King was not content with ordering, for the clergy's benefit, the strict enforcement of these various laws; he even went so far as to instruct the Governor of the Colony to afford relief to the poorer ministers by diverting to them the revenue derived from the quit-rents, provided that, after three years' test, it was found that this revenue could be spared from the immediate wants of the central administration. At a later date, the pastors complained that they had been prevented from securing any advantage from the King's recommendations by the authorities' success in inventing new means of exhausting the surplus from this source when it had been accumulated; that instead of disburs-

<sup>1</sup> Orders of Council, Sept. 1, 1693, Colonial Entry Book, 1680-95. For Andros's Proclamation requiring a stricter enforcement of these laws, see Henrico County Records, vol. 1688-97, p. 442, Va. St. Libr.

ing it, according to the royal intention, among the different ministers, they had spent it, partly in erecting unnecessary fortifications, and partly in assisting New York to carry on a campaign against the Indians.<sup>1</sup>

Andros, under the pressure of the royal commands, in April, 1695, urged the House of Burgesses to make suitable provision for the clergy's support; but that body in reply again declared that the ministers had no just reason for complaint; and that the laws already passed for their maintenance were sufficient for the purpose.<sup>2</sup> In the following month, however, they adopted a proposition to grant to each pastor an annual salary of 13,333 $\frac{1}{3}$  pounds of tobacco. When this proposition was submitted to the Council sitting as an Upper House, they amended it by fixing the salary at sixteen thousand pounds of tobacco, a very considerable increase; and the Lower House assented when the change in the original allowance came before them for acceptance or rejection.<sup>3</sup> In the revision of the laws, the Assembly of its own accord agreed upon sixteen thousand pounds of tobacco as the regular salary of each clergyman; but it would appear that Andros refused or failed to give his approval. Having been criticized for his conduct, he sought to induce the Assembly to renew its provision; and this it consented to do; but in the new Act, the ministers were not granted the advantage

<sup>1</sup> The complaint of the clergy will be found in a Memorial preserved at Lambeth Palace; see Cod. Misc., No. 954.

<sup>2</sup> Colonial Entry Book, vol. 1682-95, no page. In his petition about Governor Andros, Blair declared that this official had been ordered by the King as early as 1692 to bring the question of the ministers' salaries before the Assembly, but that he had failed to do so. Andros probably agreed with the House of Burgesses that the clergy had no reasonable ground for dissatisfaction on this score.

<sup>3</sup> Minutes of Assembly, May 16, 1695, Colonial Entry Book, 1682-95.

of cask, as they had been in the old; and besides, they were compelled to pay a larger fee for collection. It was estimated that these two new forms of expense entailed a reduction of thirteen per cent. in the total amount of their salaries.<sup>1</sup>

When, in 1696, the clergy again complained that they could only, as a rule, obtain six shillings for their tobacco per hundred pounds, although, in the payment of their salaries, every hundred pounds received was rated at twelve shillings, the House of Burgesses replied by saying that the planter's profits were subject to the like fluctuations in the price of the commodity; and that this price did not always remain at six shillings per hundred pounds, was shown by the fact that, in this very year when the clergymen were so discontented, an hundred pounds was selling at the rate of sixteen to twenty shillings.<sup>2</sup> We are informed by Beverley that, in the parishes cultivating sweet-scented tobacco, the amount which, near the close of the century, was delivered to each minister was not infrequently worth at least twenty shillings for every one hundred pounds of the sixteen thousand allowed by law; and that, taken as a whole, it assured him, from year to year, as much as the ordinary planter could derive from the arduous labours of one dozen slaves. At the time when this was written, each clergyman was entitled to have the tobacco due him for his annual stipend brought to him stored in hogsheads ready for immediate shipment abroad.<sup>3</sup>

It will be seen, by an examination of the previous paragraphs, that two facts were brought out clearly

<sup>1</sup> Blair's Memorial, 1697, Perry's *Hist. Coll. of American Colonial Church*, Virginia, vol. i., p. 10. For Act fixing salary at 16,000 lbs. of tobacco, see Henning's *Statutes*, vol. iii., p. 151.

<sup>2</sup> B. T. Va., vol. vi., pp. 105, 108.

<sup>3</sup> Beverley's *History of Virginia*, pp. 211, 212.

about the salaries paid the clergymen during the Seventeenth century:—first, that the General Assembly evinced an unvarying determination to make as liberal a provision for this purpose as the Colony could afford; and, secondly, that the stipend of the minister in Virginia was fully as large as that of the average divine in the far more wealthy communities of the Mother Country during the same period.

But the clergyman's remuneration was not confined to his salary. In addition to the annual payment of a fixed sum of tobacco, he enjoyed certain perquisites, which went far in swelling the amount received from the public for his maintenance. The most important part of this supplementary income was derived from preaching funeral sermons and performing marriage and burial services. As early as 1631, each minister was empowered to charge two shillings and sixpence for the marriage service, and one shilling for the burial.<sup>1</sup> Twelve years afterwards, the fee allowed for the marriage service, when banns had been published, was forty pounds of tobacco, and one hundred when a license had been obtained.<sup>2</sup> We learn from a statement made by the House of Burgesses in 1696 that the fee which the clergyman had the right to charge at this time amounted to twenty shillings, or two hundred pounds of tobacco<sup>3</sup>; and this is confirmed by Beverley's testimony as to a marriage following a license; but if the ceremony had been preceded by the publication of banns, the fee was limited to five shillings, or fifty pounds of tobacco.<sup>4</sup>

<sup>1</sup> Acts of Assembly, Randolph MS., vol. iii., p. 216.

<sup>2</sup> MS. Laws of Va. 1643, Clerk's Office, Portsmouth Va.

<sup>3</sup> B. T. Va., vol. vi., p. 105.

<sup>4</sup> Beverley's *History of Virginia*, pp. 211, 212.

In 1644, Rev. John Rosier was, by order of the Northampton county court, paid three pounds and two shillings for having performed a marriage and a funeral service in the family of Dr. John Holloway.<sup>1</sup> When a body was interred in the chancel of a church in York county, the clergyman was impowered to demand a fee of five pounds sterling, or one thousand pounds of tobacco.<sup>2</sup> A fee of one thousand pounds of the same commodity was, in 1645, received by Rev. Thomas Harrison for performing the burial service over the graves of Mr. and Mrs. Sewell of Lower Norfolk, and for preaching a sermon in their memory.<sup>3</sup> William Hodgkin, of Rappahannock, bequeathed, in 1671, five hundred pounds to the clergyman who should pronounce the funeral sermon over his body; and this was probably the amount usually allowed for this purpose at this time.<sup>4</sup> The regular fee for a funeral sermon delivered in the church at Middle Plantation about 1683, was fixed at two pounds sterling, or fifty dollars in modern values<sup>5</sup>; and this was the amount received by the minister, who, in the course of that year, preached a sermon in Henrico county in Francis Eppes's memory.<sup>6</sup> In 1684, one of the parishes situated in Lower Norfolk allowed a fee of six hundred pounds of tobacco for a funeral sermon delivered in memory of a former pastor.<sup>7</sup> About eight years later, the elder Nathaniel Bacon bequeathed five

<sup>1</sup> Northampton County Records, Orders April 10, 1644.

<sup>2</sup> *William and Mary College Quart.*, vol. iii., p. 172.

<sup>3</sup> Lower Norfolk County Records, Orders for 1645.

<sup>4</sup> Rappahannock County Records, vol. 1664-73, p. 65, Va. St. Libr.

<sup>5</sup> *William and Mary College Quart.*, vol. iii., p. 172.

<sup>6</sup> Henrico County Records, vol. 1677-92, orig. p. 258. Rev. Mr. Ball was allowed out of the Eppes estate ten shillings for a funeral sermon, delivered perhaps in memory of a child who had been a member of that family.

<sup>7</sup> Lower Norfolk County Records, Orders Nov. 17, 1684.

guineas to Rev. Stephen Fouace in consideration of his preaching his funeral sermon; but in leaving so large a sum for this purpose, Bacon was perhaps influenced by a feeling of personal friendship.<sup>1</sup> Nevertheless, we learn from a statement of the House of Burgesses made in the course of 1696, that a clergyman about this time very often received for delivering a funeral sermon as much as one thousand pounds of tobacco, which, at twelve shillings a hundred pounds, would represent a fee equal in value to six pounds sterling. The total perquisites from this source of some of the ministers were estimated at four thousand pounds of that commodity.<sup>2</sup>

The incomes of many pastors were increased by the fees they received for reading prayers during the sessions of the General Assembly. Rev. Cope Doyley, for having performed this service in 1695, was allowed five pounds sterling out of the revenue derived from the tax on liquors; and a like remuneration for similar services was, at the same time, granted to Rev. Samuel Eborne.<sup>3</sup> The Assembly always ordered a fee to be paid to every clergyman who had been asked to deliver a discourse before its members; fifteen pounds were, in 1698, divided up among those who had appeared on such an invitation<sup>4</sup>; and in the following year, there were distributed among the numerous ministers who had appeared under these circumstances before the House during the present and the last session, not less than one hundred pounds sterling, at the rate of ten pounds sterling to each. This large sum was

<sup>1</sup> York County Records, vol. 1690-94, p. 154, Va. St. Libr.

<sup>2</sup> B. T. Va., vol. vi., pp. 105, 108.

<sup>3</sup> Minutes of Assembly, May 16, 1695, B. T. Va. vol. liii.; see also Hening's *Statutes*, vol. ii., p. 392.

<sup>4</sup> Minutes of Council April 26, 1698, B. T. Va., vol. liii.



delivered to Commissary Blair to be handed over in equal proportions to the persons designated to receive it.<sup>1</sup>

Sometimes, a clergyman was the beneficiary under the will of a wealthy parishioner; in 1690, Rev. John Bertram was bequeathed the sum of five pounds sterling by George Spencer, of Lancaster; and in 1693, Rev. James Wallace, five hundred pounds of tobacco by Thomas Taylor, of Elizabeth City county.<sup>2</sup>

<sup>1</sup> Minutes of Assembly May 3, 1699, B. T. Va., vol. liii. We find the following in Hening's *Statutes*, vol. i., p. 549:—"Ordered that Mr. Peter Lonsdale and Mr. Philip Mallory be desired to preach at Jamestown the next Assembly."

<sup>2</sup> Lancaster County Records, vol. 1690-1707, folio p. 11; Elizabeth City County Records, vol. 1684-99, p. 251, Va. St. Libr.

## CHAPTER XV

### The Clergy : Glebes and Parsonages

**I**N addition to his regular salary and his fees for the performance of various services, the clergyman was, during his incumbency, entitled to the use of a glebe. As early as 1619, a plantation of one hundred acres was, for this purpose, set apart in each of the newly created boroughs; and the Company took such extraordinary pains to provide laborers for the tillage of these lands that, at a session of the General Court in the following year, it was stated that at least fifty tenants for them had already been sent out to Virginia.<sup>1</sup> A large proportion of the area of soil embraced within their boundaries must, at this time, have been highly productive, as there had not yet been cultivation sufficient to exhaust the fertility resulting from the deep layers of decayed wood and leaves. In 1625, the date of William Claiborne's survey, the glebe lying at the point where the Chickahominy River emptied into the James contained one hundred acres, whilst the one situated in the vicinity of Newport's News contained as many as two hundred.<sup>2</sup> The

<sup>1</sup> Abstracts of Proceedings of Va. Co. of London, vol. i., p. 66. It was at first decided to transport to Virginia six tenants for each of the three most important glebes, namely, those attached to the lands assigned respectively to the College, the Governor, and the Company; for each of the other glebes, the Company agreed to send out three tenants, provided that each settlement where a glebe had been laid off would furnish an additional three.

<sup>2</sup> Randolph MS., vol. iii., p. 185.

Assembly, in 1639, directed that the glebe lands of Cheskiack parish should cover an area of not less than two hundred acres.<sup>1</sup> It is probable that this number was allowed by law to be attached to every parsonage, for when, in the following year, Rev. Thomas Hampton petitioned the General Court that he should be granted one hundred acres, in addition to the one hundred at that time forming his glebe, the judges, assenting, gave orders that the new patent should be laid off at a point back of the old.<sup>2</sup>

By the instructions given to Berkeley in 1642, the Governor of the Colony was required to see, not only that the area of each existing glebe was increased to two hundred acres, whenever it fell short of that number, but also that, during the next three years, every parishioner, either with his own hands or his servants', assisted his pastor in working this ground so as to bring it to a proper state of cultivation. This probably applied only to those glebes which had recently been laid off, and which were, no doubt, overrun with thick woods. It was expressly ordered that every glebe should be chosen as near as possible to the parsonage; and that it should be made up of the most fertile soil the surrounding country afforded.<sup>3</sup>

It seems to have been in the vestry's power as early as 1647 to dispose of the existing glebe should they have cause to think that they could secure another marked by a finer quality of soil. Such sales, perhaps, occurred very often, for, under the system of cultivation pre-

<sup>1</sup> Robinson Transcripts, p. 226.

<sup>2</sup> *Ibid.*, p. 22. The patent was made out to "Mr. Hampton and his successors."

<sup>3</sup> Instructions to Berkeley, 1642, *Va. Maga. of Hist. and Biog.*, vol. ii., p. 281.

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vailing throughout the century, the land was soon reduced in fertility, unless situated in the alluvial bottoms along the banks of the streams. The area of the glebe was small, and there was not much virgin ground to draw upon after that area had been tilled by a succession of clergymen. At an early date, as we have seen, instructions were given by the authorities that each new glebe should be laid off in the most favored locality, because so much more likely there to endure a long course of working without serious injury; if, however, the land after a few years began to show unmistakable signs of exhaustion, no recourse was left the vestry but to sell it to some wealthy planter of the neighbourhood anxious to enlarge his forests or his cattle range, and buy a second glebe where the soil promised a longer retention of its original excellence.<sup>1</sup>

By a law adopted in 1660-1, every parish occupied by a sufficient number of tithables was required to have a glebe attached to the parsonage; and this glebe was to be furnished with all the necessary buildings; and also fully stocked with cattle and hogs. Whenever a parish was inhabited by too few persons to allow such a serious outlay, it was to be annexed to the nearest parish possessing population and general resources sufficient to permit it to own a glebe and to keep it in good condition.<sup>2</sup>

By the instructions given to Berkeley in 1662, it would appear that the glebe's area was thereafter to be cut down to one hundred acres.<sup>3</sup> The reason for

<sup>1</sup> In 1647, a sale of one of the glebes in York County was made to Mr. Peter Rigby; see Records, vol. 1638-48, p. 274, Va. St. Libr.

<sup>2</sup> Hening's *Statutes*, vol. ii., p. 30.

<sup>3</sup> Randolph MS., vol. iii., p. 276. This regulation, it would appear, was intended to apply only to the glebes to be created after these instructions were given.

this change is obscure, unless all fertile lands situated within the body of the Colony had been steadily rising in price with the growth in wealth and population; such a reason, however, had no application in the outlying parishes, where so large a proportion of the lands, being still covered with forest, were practically without any value.

When a clergyman had vacated his pulpit, the glebe, in the interval before his successor's election, was sometimes cultivated by an agent of the vestry. In 1648, Rev. Mr. Harrison, of Lower Norfolk, having refused to administer the sacraments, deliberately deserted his ministerial office owing to his conversion to Puritanism. The glebe attached to his parsonage was at once placed in charge of John Norwood, who was required to give an account of the profits.<sup>1</sup> As a rule, the glebes, under these circumstances, seem to have been rented; such at least was the disposition made of one in Henrico county in 1685, in which year, Thomas Cocke, Jr., was summoned to court to answer for tending, contrary to law, tobacco seconds growing on land belonging to the parish living.<sup>2</sup>

Devises of ground for use as a glebe were not uncommon on the part of benevolent testators. About 1638, Mr. Cooper, of Isle of Wight county, left a part of his estate for this purpose<sup>3</sup>; and thirty years later, Thomas Foote, of York, by will directed that, should his sons not live beyond their twenty-first birthday, his "entire seate of lande" was to pass to New Poquoson parish, to be converted into a glebe for the support of a

<sup>1</sup> Lower Norfolk County Records, vol. 1646-51, p. 82.

<sup>2</sup> Henrico County Records, vol. 1677-92, orig. p. 313; see also Isle of Wight County Records, vol. 1688-1704, p. 269.

<sup>3</sup> Isle of Wight County Records, vol. 1688-1704, p. 269.

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minister.<sup>1</sup> In 1671, Zachariah Cripp, of Gloucester, made a gift of three hundred acres to Ware parish, situated in that county, to serve the same end.<sup>2</sup>

Numerous instances occurred in which the glebe was stocked with cattle and hogs by the generosity of persons residing in the same parish, or interested in its welfare. John Sadler, joint owner with Richard Quiney of a great patent at Merchant's Hope, bequeathed to the parish lying there, for the use of the minister occupying its pulpit, his herd of cows, from which it was expected that a large income would be annually obtained.<sup>3</sup> At a later date, Nathaniel Jones, of Westmoreland county, made a similar though less valuable present to the parish of Machodick for the like purpose.<sup>4</sup> Before the close of the century, these gifts for the improvement of the glebes' value must have represented a very considerable sum, for Beverley informs us that they included, not only cattle, horses, hogs, and the like, but also slaves; and that a minister in vacating his living was required to account for this livestock only to the extent of their number when he entered on the glebe. In other words, he was permitted to appropriate any surplus as if it had, from the beginning, belonged to him absolutely.<sup>5</sup>

The general condition of the glebes at the end of the century is presented in two different lights in a controversy which at that time arose between certain clergymen and the House of Burgesses. In 1695, when Andros, acting under instructions from the King, urged

<sup>1</sup> York County Records, vol. 1664-72, p. 242, Va. St. Libr.

<sup>2</sup> General Court Records, vol. 1670-76, p. 54.

<sup>3</sup> *Va. Maga. of Hist. and Biog.*, vol. iv., p. 316.

<sup>4</sup> Westmoreland County Records, vol. 1653-72, p. 122.

<sup>5</sup> Beverley's *History of Virginia*, p. 211.

the Assembly to make more comfortable provision for the ministers, that body asserted that, as a rule, the area of lands embraced in the glebes belonged to the most fertile soil in Virginia; that, in many instances, these glebes spread over as much ground as four hundred or five hundred acres, and in some, over as much as eight hundred or a thousand; that they had been improved by the planting of orchards, the building of fences, and the laying off of pastures,—all in addition to the presence of the ordinary farm houses; and that, taken as a whole, the glebes were so valuable that the minister occupying any one of them was in as good a pecuniary condition as a gentleman owning a fine plantation and twelve or fourteen servants.<sup>1</sup>

Blair and fourteen of his associates among the clergy, in their reply to this statement of the House, declared that the description of the glebes' condition which it contained was "ornamental" because, first, there was no glebe at all in many of the parishes; secondly, in several, the minister was deprived of its possession; thirdly, the glebes actually occupied and enjoyed were not fitted for the clergymen's "commodious reception and accomodation" whether one considered the houses, the orchards, or the other conveniences; and, finally, if one glebe was taken with another, the income annually derived from this source by each pastor would not exceed forty or fifty shillings.<sup>2</sup>

<sup>1</sup> Colonial Entry Book, April 30, 1695, vol. 1682-95. As previously shown in the text, this statement was confirmed by the testimony of Beverley in his History.

<sup>2</sup> B. T. Va., vol. vi., p. 105. There are numerous entries in the records which show incidentally that many glebes were occupied by a succession of ministers; for example, from a deposition of an aged citizen of Isle of Wight in 1697, we learn that the glebe in that county had, in the course of sixty years, been in the possession of

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The Burgesses were greatly incensed by this reply, which they characterized as "malitious, untruthful and unjust." As to the charge that some parishes were lacking in a glebe, they declared that this was the minister's fault as he had, under the provisions of the existing law, a right to have a glebe laid off and assigned him as soon as he entered his living; and as to the detention of glebes, that but one instance had occurred, which was due to the fact that the minister in possession had committed such waste that the vestry had been compelled to deprive him of its use.<sup>1</sup> As to the physical condition of the glebes, the House's claim that they were as well appointed in the way of buildings and other improvements as the average plantation of the Colony, was, no doubt, strictly correct. If there were signs of dilapidation in some cases, it was to be laid chiefly at the door of the ministers themselves, either because they were deficient in capacity for practical management, owing to inexperience or special traits; or because, having reason to doubt their vestries' good will, they allowed their probational hold on their livings, which created the impression that they might at any moment have to vacate the land, to discourage them from keeping their glebes in good condition. Blair himself, as we have seen, had asserted that this indifference to their improvement was one of the most unhappy results of the clergymen's uncertain tenure. Where, however, the minister was not only sure of his vestry's favor, but also, as a lover of tidiness, reluctant to allow his glebe to fall into a state of neglect, there is no ground for

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at least three. This glebe was finally leased and sold; see Isle of Wight County Records, vol. 1688-1704, p. 269.

<sup>1</sup> B. T. Va., vol. vi., p. 108.



thinking that the complaints of Blair and his fellow-signers obtained either his silent sympathy or his open encouragement.

Perhaps, the first parsonage erected in Virginia was the one built at an early period in the Colony's history for the Rev. Mr. Whitaker. It was situated on the western side of the James River, at a point opposite Henricopolis. Smith described the house as a "fair framed" structure, although, at the time this was written, it had not yet been finished. It seems to have been known by the name of Rock Hall.<sup>1</sup> Many years later, there was a parsonage standing further down the river at Martin Brandon, as we learn from the bequest which John Sadler, a merchant of London, made for its repair.<sup>2</sup>

It was the General Assembly's custom in directing a new parish to be laid off, to give instructions for the building of a parsonage on the glebe assigned to it; such was the course followed when, in 1639, the new parish of Cheskiack was created.<sup>3</sup> It was perhaps by force of this general provision that Rev. William Cotton, in 1635, presented to the county court of Accomac an order from Jamestown requiring a parsonage to be erected on the glebe which he held; and the court, having appointed a vestry, there being none at the time, commanded them to carry out this order.<sup>4</sup> The dwelling-house built represented very probably the average size of the residences occupied by the clergymen:—it extended forty feet in length, and eighteen in width; and between the floor and the wall

<sup>1</sup> *Works of Captain John Smith*, vol. ii., p. 12, Richmond edition.

<sup>2</sup> *Va. Maga. of Hist. and Biog.*, vol. iv., p. 316.

<sup>3</sup> Robinson Transcripts, p. 226.

<sup>4</sup> Accomac County Records, Orders Sept. 14, 1635.

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plates, there was an interval of nine feet. A chimney was constructed at each end of the house. A partition raised near the middle of the floor divided the interior into a set of rooms:—on the one side, a chamber; on the other a study, kitchen, and buttery. In the garret above, there were perhaps additional rooms for the family's use.<sup>1</sup>

If the contingency anticipated by Stephen Charlton in his will in 1654, occurred, the minister then holding one of the livings on the Eastern Shore was much more commodiously situated in the way of a residence and glebe:—Charlton directed that, should his daughter, who appears to have been an only child, die without issue, then the mansion in which he dwelt as well as the outbuildings, orchards, gardens, and the surrounding dividend of land lying immediately on Nassawadox Creek, should become the property of the parish, to be reserved indefinitely for the support of a clergyman of the Church of England.<sup>2</sup>

In some of the parishes, the minister's residence was more spacious than the parsonage erected in Accomac for the Rev. William Cotton. We discover, through the inventory of his personal estate, that the dwelling-house of Rev. Rowland Jones, besides a passage or hallway and a kitchen, contained two chambers for Mrs. Jones, one perhaps occupied as a sleeping-room,

<sup>1</sup> Accomac County Records, vol. 1632-40, p. 43, Va. St. Libr. Culpeper in his report of 1681, stated that "in most of the glebes there are houses good enough as they think, to answer the law." The parsonage built in Accomac county for Cotton's occupation was the typical residence of the average citizen of the Colony.

<sup>2</sup> Northampton County Records, vol. 1654-5, p. 57. It is probable that this condition went into effect, as the daughter seems to have died without heirs not long after her clandestine marriage referred to elsewhere.

the other as a sitting; a chamber and a study for the use of Mr. Jones himself; a parlor, which also perhaps served as a dining-room; a room situated above the porch; a chamber reserved for guests; and a chamber attached to the kitchen, where, no doubt, one of the servants slept.<sup>1</sup>

Some of the clergymen, especially if they happened to be unmarried, preferred to engage board with a neighbor rather than to reside alone in the parsonage. In 1658, Simon Barrows, of Lower Norfolk, petitioned the court to allow him in the next levy one thousand pounds of tobacco, which he claimed to be due him for providing "diet" for Rev. George Alford, the minister holding the benefice of Lynnhaven parish.<sup>2</sup> Rev. George Hopkins and his wife seem to have spent at least three years as lodgers in Captain West's home during the time Hopkins was the incumbent of one of the livings situated in York county.<sup>3</sup>

In every parsonage, however small in dimensions, there was always one room reserved as a private study for the minister in writing his sermons; and this was, no doubt, the apartment in which he also received his callers. It was here too that the volumes he owned were stored away on shelves. All the clergymen, as one of the requisites of their calling, had been carefully educated, and were familiar with books; when they came over to Virginia, they brought with them at least the different works in which they had been grounded while pursuing a course in theology before becoming candidates for holy orders.

<sup>1</sup> *William and Mary College Quart.*, vol. iii., p. 246.

<sup>2</sup> Lower Norfolk County Records, vol. 1656-66, p. 183; Lower Norfolk County Antiquary, vol. iii., part i.

<sup>3</sup> *William and Mary College Quart.*, vol. iii., p. 181.

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Some of the libraries belonging to ministers in the Colony were, in number of volumes, very respectable for that age. In 1645, the collection in the possession of Ralph Watson, who is designated in the records as "clerke," contained as many as thirty "great books" in folio, and fifty smaller ones in quarto. The two sets made up a total of eighty. Now if by "books" titles were meant, as was generally the case, then these eighty books represented, at an average of two volumes to the title, not less than one hundred and sixty volumes; and that they were well chosen is proven by the fact that the larger proportion were written in the Latin language, the language used by the greatest scholars of that age.

In the year in which an inventory was taken of the Watson collection, an inventory was also taken of the collection of Rev. George Hopkins, described as composed of old volumes.<sup>1</sup> In 1656, Rev. Robert Dunster, of Isle of Wight county, bequeathed all his books to his wife,<sup>2</sup> whilst, in 1678, Rev. Amory Butler, of Rappahannock, by will left his library, as well as his sermons and other papers, to his brother, Rev. William Butler, who held the living of Washington parish. His executors, however, were to exercise the privilege of selecting, each for himself, any three works they respectively preferred.<sup>3</sup>

Rev. Robert Powis, of Lower Norfolk, owned in 1652 thirty-two works, which, in the proportion of two volumes to the title, represented a collection of sixty-four volumes.<sup>4</sup> In his will, offered for probate in 1682,

<sup>1</sup> *William and Mary College Quart.*, vol. iii., p. 181.

<sup>2</sup> Isle of Wight County Records, Wills for 1656.

<sup>3</sup> Rappahannock County Records, vol. 1672-82, p. 64, Va. St. Libr.

<sup>4</sup> Lower Norfolk County Antiquary, vol. i., p. 105; Lower Norfolk County Records, vol. 1651-56, p. 37.

Rev. Benjamin Doggett instructed his executors to purchase a "great cheste" in which his books were to be packed and shipped to England, where they were to be sold for the benefit of his heirs.<sup>1</sup> The library of Rev. Thomas Perkins, of Rappahannock, was inventoried as containing three large parcels of books, one set of which was covered with parchment or paper; the remainder, no doubt, with calf. Three of the works that had belonged to him were so handsomely bound, and perhaps also so beautifully illustrated, that, after his death, they were appraised at the large figure of four hundred and fifty pounds of tobacco, whilst the total value of the library was estimated at one thousand and ninety-two pounds, about one seventh of the value of the entire personal estate. In considering this collection, it should be remembered (and the same is true of all the other collections yet to be mentioned) that the appraisement took into account only the physical condition of the books, and that a low calculation of their value, from that point of view, does not convey any real idea of their value from the point of view of their contents or their rarity.<sup>2</sup> The collection of Rev. William Scrimgour, who resided in Westmoreland, was entered in the inventory of his estate as worth as much as ten thousand pounds of tobacco, which, at twopence a pound, would bring its value in modern currency to two thousand dollars at least, no mean sum to be invested in books by a divine of that age, and perhaps not surpassed by the value of the libraries owned by the great bulk of the English clergy. The library of Rev. Mr. Scrimgour may not have been

<sup>1</sup> Lancaster County Will Book, 1674-89, folio p. 81. Among the items of his inventory was "one trunke of bookes."

<sup>2</sup> Rappahannock County Records, vol. 1677-82, orig. p. 28.

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larger than that of Rev. Mr. Perkins, or more desirable from a literary or theological point of view, but because the majority of the volumes had been more recently published or bought, their physical condition called for a higher appraisement when an inventory of them was taken.<sup>1</sup>

The books arranged on the shelves of Rev. Rowland Jones's study were appraised in the inventory of his personal estate at fourteen pounds sterling, or three hundred and fifty dollars in modern values. In a chest standing in one of the chambers were stored away a number of volumes so dilapidated that they were entered as worth only fifteen shillings. But the largest and choicest library in a clergyman's possession during this period was the one owned by the Rev. Thomas Teakle, who filled a benefice on the Eastern Shore. To his son, Mr. Teakle bequeathed fifty-two works written in English relating to religious subjects, and also thirty-four written in Latin, whilst his daughter, as her share, received sixty similar works in English and thirty-one in Latin. This library contained about one hundred and nine books treating of theology and kindred topics, or a total, perhaps, of two hundred and fifty volumes ranging over this general field alone. There were also forty-eight books, probably embracing as many as one hundred volumes (the larger number

<sup>1</sup> Westmoreland County Records, vol. 1691-99, folio p. 52. The Scrimmour personalty was appraised at 61,303 pounds of tobacco; the value of the books, therefore, amounted to one sixth of the estate. Scrimmour is improperly entered as "Scrimmington" in the List of Parishes and Clergymen in 1680 printed in the *Colonial Records of Virginia*, State Senate Doct., Extra, 1874. It is an old English family name generally spelled "Scrimgeour." In 1659, the inventory of the personal estate of William White, clerke, of York county, included "His Bookes"; see York County Records, 1657-62, p. 152, Va. St. Libr.

written in Latin), devoted to the discussion of the various branches of the medical science. The varied character of the whole collection showed that Mr. Teakle possessed unusual catholicity of literary interests. The two extremes were perhaps best represented, on the one side, by his copies of Horace and Lucretius, and on the other, by the treatise entitled the *Picture of a Papist and Presbyterian Unmasked*. The library also contained Burton's *Anatomy, Civil and Military Aphorisms*, Grotius's *Laws of War*, and other similar works.<sup>1</sup>

<sup>1</sup> Accomac County Records, vol. 1692-1715, p. 146 et seq. The titles of the Teakle collection fill ten pages folio of the Accomac Records. In some instances, one title represented as many as nine volumes.

## CHAPTER XVI

### The Clergy: Their Estates

**T**HERE are numerous proofs that many of the clergymen were in possession of a considerable amount of property, either inherited or accumulated out of their professional incomes by strict economy. In the muster of 1625, Rev. Greville Pooley was entered as the owner of two agricultural servants, one of whom was twenty-one years of age, the other sixteen; his livestock consisted of one cow and one pig; and he had eight barrels of corn stored away for future consumption. That he was not unprepared for defense in case of an Indian assault is shown by the fact that he owned one "armour," three swords, and three fixt peek. The minister residing at Elizabeth City at this time was the master of three servants; but his livestock seems to have been limited to three goats; and his fund of grain to ten barrels of corn. He possessed no arms.<sup>1</sup> In 1635, Rev. Thomas Butler, of Denbigh parish, obtained a patent to one thousand acres of land, and Rev. George White to two hundred.<sup>2</sup> Rev. George Keith, for bringing in fourteen persons, including himself and his wife, at his own expense, received a grant in Charles River, afterwards York county, of eight hundred and

<sup>1</sup> See Muster of Jan'y 20-Febry. 7, 1625, British Colonial Papers, vol. iii., No. 35.

<sup>2</sup> Virginia Land Patents for 1635.



fifty acres.<sup>1</sup> Rev. Willis Higby, pastor of the parish which included Mulberry Island, was presented with a plantation of two hundred and fifty acres by the General Assembly as a proof of the public appreciation of his pious life, and as an inducement to others to follow in his footsteps.<sup>2</sup> Rev. Thomas Hampton, by the importation of six persons at his own cost, obtained in 1637 a patent to three hundred acres situated on the Nansemond River.<sup>3</sup> Only six years afterwards, Rev. John Rosier, of Northampton, leased to Robert Wyard his plantation and dwelling-house, together with two servants; and Wyard was also to have the use of nine milch cows, the poultry, the household furniture, and other articles. For the whole, he was to pay a rental of six thousand, five hundred pounds of tobacco. It is evident that this was Rosier's private property, for had the plantation been really the glebe, the vestry, not he, would have been renting it. We find him, at a later date, bringing in servants at his own expense; no doubt, to till land at that time in his possession.<sup>4</sup>

The inventory taken of the estate of Robert Powis in 1652 disclosed that he was the owner of no inconsiderable amount of property. His personalty, which alone was valued at nearly twelve thousand pounds of tobacco, included, in addition to a large quantity of household furniture and utensils, eighteen head of cattle and seven head of swine, and also a number of debts due him. He also possessed a boat, for he

<sup>1</sup> *Va. Maga. of Hist. and Biog.*, vol. iii., p. 279.

<sup>2</sup> Tyler's *Cradle of the Republic*, p. 151.

<sup>3</sup> *Va. Maga. of Hist. and Biog.*, vol. vi., p. 191.

<sup>4</sup> Rosier seems to have retained one room in the house for his own use; Northampton County Records, Orders Febry. 10, 1643; see also Orders July 28, 1645.

seems to have resided directly on the water. In his will, he gave orders that sixteen of his herd of cattle should pass to his daughter, who at this time, was living in the Mother Country; and should she prefer to remain there, these cattle were to be sold for tobacco, to be shipped for her benefit either to England or Holland. To one friend, he bequeathed a hogshead of that commodity; to another, a heifer and three barrels of corn; whilst to his only son, Robert, he devised the remainder of his estate.<sup>1</sup> John Gorsuch, of Lancaster, who is described in the records as a "professor in divinity," possessed at his death valuable interests in England; and in 1656, his two sons obtained an order of court permitting their sister to act as curator of this English property.<sup>2</sup> Rev. William Thompson, of Surry, in 1664, purchased from William Morton of New England one "p'cell or necke of land" situated in New London; and in the following year, he sold a tract of land which he owned in Virginia; and again another tract in 1673. The assessment of 1675 showed him to be the owner of eight tithables, the second largest in the county.<sup>3</sup>

✓ <sup>1</sup> Lower Norfolk County Records, vol. 1651-56, p. 37; see also Orders Jan'y 15, 1651, Dec. 21, 1652; Lower Norfolk County Antiquary, vol. ii., pp. 124, 126. For four years, Powis, who had been inducted for the whole of Lower Norfolk performed all the ministerial functions for the county, and yet received no compensation for his "great pains, travel and endeavors." The vestry, in 1648, paid him one year's full tithe in tobacco and corn. Mr. Powis, and, no doubt, there were others like him, refuted in his conduct the charge against the clergy of the Colony made in 1658 by a Quaker witness in Northampton County, who said: "the ministers who come into this Country were ravenging wolves and hungry dogges and would preach no longer than they were fed"; see Northampton Records, 1657-64, f. p. 27.

<sup>2</sup> Lancaster County Records, vol. 1656-66, p. 7.

<sup>3</sup> Surry County Records, vol. 1645-72, pp. 253, 281; see also vol. 1671-84, pp. 43, 136, Va. St. Libr.

Rev. John Gwyn in 1672 claimed the right under the law as a clergyman to be exempted from the payment of all public taxes due for himself and his six tithables, a working force that compared very favorably with the like force possessed by the average citizen of the Colony.<sup>1</sup> That Rev. Thomas Doughty, of Rappahannock, was a large property holder is shown by the conveyances he made to his wife in anticipation of a long journey he was about to start upon at that time.<sup>2</sup> Rev. Amory Butler bequeathed to friends, not only a number of valuable books, as we have seen, but also several legacies, one of which amounted to as much as two thousand pounds of tobacco. The remainder of his estate passed to his nephew.<sup>3</sup> Rev. Robert Parke, of Surry, owned a grist mill situated in that county and also several slaves.<sup>4</sup> Rev. John Waugh, of Stafford parish, in 1675, sold a tract containing two hundred and fifty acres, perhaps only one part of the land belonging to him; and a few years later, Rev. John Ball, rector of Varina parish, in Henrico, is found presenting various kinds of livestock to his step-children.<sup>5</sup> The personal estate of Rev. Thomas Perkins, of Rappahannock, was, in 1684, valued at seventy-four hundred and seventy-six pounds of tobacco. It is interesting to note that it included one canonical and one cape gown, a dimity and a plush coat, a silk waistcoat and girdle, and two dimity waistcoats, three periwigs, a pair of silver buttons for breeches, and also a pair of shoebuckles. As he seems to have left no household furniture, it is probable that,

<sup>1</sup> General Court Records, vol. 1670-76, p. 137.

<sup>2</sup> Rappahannock County Records, vol. 1668-72, p. 40, Va. St. Libr.

<sup>3</sup> *Ibid.*, vol. 1672-82, p. 64, Va. St. Libr.

<sup>4</sup> Surry County Records, vol. 1671-84, pp. 291, 391, Va. St. Libr.

<sup>5</sup> Henrico County Records, vol. 1677-92, orig. p. 217.

during his incumbency, he had resided in the parsonage belonging to his living.<sup>1</sup>

Rev. John Lawrence, who had preached for some time in Maryland, where (so he declared with evident complacency) the "Roman Catholics could not endure him," died at Point Comfort, in 1684, and his will revealed the fact that he had made a Mrs. Benson, his nurse during his last illness, the chief beneficiary of his personal estate. His bequests to her included a large quantity of gold and silver, jewels and rings. Lawrence, who had graduated as a master-of-arts at one of the English Universities, had owned considerable property in the parish of St. Martins in-the-Fields, in London.<sup>2</sup> In 1686, Rev. James Blair purchased from William Byrd land situated in the parish of Varina in Henrico county.<sup>3</sup> Rev. Rowland Jones, who died about 1689, left personalty which alone was valued at four hundred and forty pounds sterling, about eleven thousand dollars in our modern currency. He was the owner of ten slaves, and, in addition, forty-one head of cattle, twelve horses, thirty-six sheep, and a great number of hogs. His residence contained a large quantity of household furniture and kitchen utensils. Among the different articles belonging to his personal estate was one hundred and thirteen pounds of pewter appraised at a figure as high as four pounds and fourteen shillings. The number of livestock owned by Rev. Rowland Jones shows that he was also the proprietor of a very considerable area of land.<sup>4</sup>

<sup>1</sup> Rappahannock County Records, vol. 1677-82, orig. p. 28.

<sup>2</sup> Lower Norfolk County Deed and Will Book, 1675-86, p. 182.

<sup>3</sup> Henrico County Records, vol. 1677-92, orig. p. 420. Blair at his death is said to have left £10,000 to his nephew John Blair, President of the Council; see *Va. Maga. of Hist. and Biog.*, vol. vii., p. 155. <sup>4</sup> *William and Mary College Quart.*, vol. iii., p. 246.

The property in the possession of Rev. Thomas Teakle, who died about 1695, was even more valuable. To Margaret, a daughter, he devised a plantation, with the right of annually making a thousand gallons of cider from the apples produced in the home orchard, and to her, he also bequeathed three slaves; to his daughter Elizabeth, two and a plantation; and to his daughter Kate, the like. His son John was to receive three slaves and the remainder of his lands. The residuary estate was required to be apportioned equally among three of his children, who were mentioned by name; thus to John, there was to go one share consisting of clothes, linen, household utensils and similar articles, valued at ninety-five and a half pounds; a second share was to go to Elizabeth and a third to Kate, valued respectively at one hundred and eighteen pounds and seventeen shillings. Among these three children were to be divided fifty-four head of cattle and thirty-nine head of sheep, and quite probably a large number of hogs,—animals not always included in the inventories owing to the wild state in which they roamed the forests. Mr. Teakle seems also to have left a considerable sum in the form of ready money:—to his son, he bequeathed Spanish coin equal in value to four pounds and fifteen shillings, and also a purse of ten shillings in English gold; and Elizabeth too was to receive the same amount. His daughter Margaret does not appear to have benefited under the will to the same extent as the other children, either because she, as perhaps the oldest of them, had been partly provided for in her father's lifetime, or because she had given him offence by escapades like the dance, which, as we saw, brought down on her so much of the pater-

nal displeasure.<sup>1</sup> The whole estate, personal and real, of Mr. Teakle very probably fell little short of fifty thousand dollars in our present values.<sup>2</sup>

The preceding instances, which do not embrace all that might be gleaned from the few county records of the Seventeenth century surviving to the present day, indicate that there were a large number of clergymen in the Colony at that time who possessed a very considerable amount of private property. If this property had been purchased by them with money brought from England, then it would appear that Virginia offered advantages even in the eyes of the English divines not absolutely dependant on their calling for a subsistence, a fact that would controvert the repeated statements of interested observers like Blair and Godwyn that the uncertain tenure of the livings in the Colony discouraged without exception the superior clergy from emigrating. But it is more probable that most of the estates held by the ministers were accumulated by careful management after their arrival in Virginia, which would go to show that the income obtained in following their profession there was not so meagre after all.

There are numerous proofs that many of the clergymen were active men of business. In 1643, Rev. John Rosier gave a bill for so large a sum as thirty pounds sterling; and that confidence was felt in his practical judgment is proven by the frequency with which he appears in the records as having served

<sup>1</sup> See Bruce's *Social Life of Virginia in the 17th Century*, chapter xii.

<sup>2</sup> Accomac County Records, vol. 1692-1715, f. p. 98, 138 et seq. In 1683, Mr. Teakle brought three young negroes to the county court to have their ages adjudged. These he had very probably recently bought; see same records, vol. 1682-97, p. 26.

as either an appraiser or an arbitrator.<sup>1</sup> Rev. John Wright, who held the living of Poquoson parish in York, on at least one occasion gave a bond for one hundred and forty pounds sterling, on account of some transaction in which he had been engaged.<sup>2</sup> Rev. Thomas Higby served as the attorney in Virginia of Elizabeth Dodsworth residing in the English county of Middlesex.<sup>3</sup> Rev. Andrew Jackson, some years later, was named by James Phillips in his will as the guardian of his son, and curator of the whole of his personal and real estate. Jackson was to receive thirty per cent. of the profits in compensation for his trouble.<sup>4</sup> In 1697, Rev. James Wallace was chosen by George Willocks, "late of Perth Amboy in New Jersey," to act as his representative in recovering all sums due him in Virginia, Maryland, and Carolina; and if necessary to cast his debtors into prison.<sup>5</sup> Wallace seems to have found, at least in one instance, the collection of these outstanding amounts a dangerous undertaking, for while seeking to carry out his principal's instructions, he was assaulted at Kikotan at the court-house door by Colonel Armistead and his son.<sup>6</sup> Rev. Thomas Teakle, probably the wealthiest clergyman residing in Virginia during the Seventeenth century, was constantly acting as trustee and executor, a tribute as well to his integrity as to his talents for business.

<sup>1</sup> Northampton County Records, Orders Febr. 10, 1643; July 28, 1645.

<sup>2</sup> York County Records, vol. 1684-87, p. 12, Va. St. Libr.

<sup>3</sup> Northampton County Records, vol. 1654-55, f. p. 39.

<sup>4</sup> Lancaster County Records, Orders Jan. 3, 1689.

<sup>5</sup> Elizabeth City County Records, vol. 1684-99, pp. 128, 487, Va. St. Libr.

<sup>6</sup> See an imperfect paper preserved at Lambeth Palace, Cod. Misc., No. 954, paper 65.

In some cases, the minister found himself in court in a character perhaps less creditable:—for instance, in 1647, Rev. Robert Powis was the defendant in a suit for seven hundred and thirty-three pounds of tobacco; and Rev. William White, in 1657, for seventeen hundred pounds. White seems to have left his family in a situation of great poverty on account of the number of claims in Virginia and England alike against his estate.<sup>1</sup> About 1684, Rev. Samuel Dudley, of Rappahannock, was required by an order of court to pay to Colonel William Lloyd thirty-eight hundred and fifty pounds of tobacco.<sup>2</sup>

<sup>1</sup> Lower Norfolk County Antiquary, vol. ii., p. 14; Lancaster County Records, vol. 1656-66, p. 46.

<sup>2</sup> Rappahannock County Records, Orders Oct. 1, 1684.



## CHAPTER XVII

### The Clergy: Their Duties

**B**EFORE entering upon an inquiry as to the general character of the clergymen of Virginia during the Seventeenth century, it will be of interest to touch briefly on the nature of their ordinary duties. As early as 1619, they were required to make a report of all christenings, burials, and marriages occurring in their parishes in the course of a year.<sup>1</sup> This duty, by the Act of 1631-2, was imposed on them apparently in association with the churchwardens; but as late as 1686, it seems to have been again imposed on them alone.<sup>2</sup> Every pastor under the provisions of the same Act was ordered to instruct all the young persons belonging to his congregation in the Ten Commandments, the Lord's Prayer, the Catechism, and the Articles of Belief; and should a parent fail to send his child to the church at the time appointed, namely, the half hour before evening service, then he was to be called before the county court and censured. This is an additional indication of how minute was the supervision exercised by the justices over everything promotive as well of

<sup>1</sup> Minutes of Assembly, 1619, p. 26, *Colonial Recs. of Va.*, State Senate Doct., Extra, 1874.

<sup>2</sup> Hening's *Statutes*, vol. i., pp. 155-7; Proclamation of Governor and Council, Colonial Entry Book, vol. 1680-95, p. 227. The law of 1657-8 required the vestry to keep a registry book for this purpose; see Hening's *Statutes*, vol. i., p. 431.

the moral as the material welfare of the community. By an Act passed in 1640, the minister was ordered to catechize, not only all the children living in his parish, but also all the servants; and in performing this duty it would seem that he could cause his pupils to repair to the church nearest to them to receive instruction, and if there was more than one, he had to traverse the whole of his parish in order to visit each church until all had been taught.<sup>1</sup> He was also required to visit the sick, to administer the sacraments three times a year, and to baptize infants.<sup>2</sup>

It was provided by law, in 1641, that there should be an annual meeting of all the ministers and churchwardens of the Colony; that it should be held at Jamestown; and that the Governor and Council, in their character very probably of an ecclesiastical court, should be present. This meeting, which was to take place immediately after Easter, was to be in the nature of a visitation as formulated by the orders of the Church of England.<sup>3</sup> No doubt, on this occasion, the general condition of the Colony's religious affairs was fully gone over, the needs of the different parishes carefully canvassed, and plans adopted for advancing the moral welfare of the people. Moreover, such a meeting afforded the clergymen (who had few chances of being thrown together in consequence of the dis-

<sup>1</sup> *Va. Maga. of Hist. and Biog.*, vol. ix., p. 52. The catechism was to extend to the "fundamental points of the Christian Religion." It was to be held on Sunday afternoon throughout the interval between March 1 and November 30, the period of the year when the atmosphere was at its mildest, and the children were in the least danger of exposure to inclement weather.

<sup>2</sup> Randolph MS., vol. iii., p. 216; Hening's *Statutes*, vol. i., pp. 157, 290.

<sup>3</sup> *Va. Maga. Hist. and Biog.*, vol. ix., p. 53.

tances between their homes) at least one opportunity each year of becoming well acquainted with each other; of forming new and reviving old friendships; and of acquiring a deeper zeal in performing all the duties of their sacred calling. This personal association, though necessarily brief, must have been highly refreshing and stimulating for a body of men who, during the remainder of the twelve months, led a rather secluded life in their remote parsonages.

The minister's duties in 1644 were perhaps unusually heavy, for at this time some of them at least were in charge of two parishes; and some even of three.<sup>1</sup> Every clergyman, after the Restoration, was required to deliver at least one sermon a month in the chapel-of-ease, should one be situated in his parish; on each remaining Sunday, he was to preach in his parish church; and twice in the course of the year (instead of thrice as formerly), he was to administer the Sacrament of the Lord's Supper. The service each Sabbath was now perhaps rarely held more than once during the twelve hours, as the distance which most of the people had to traverse in order to attend at all would have made it impossible for them to wait for the second sermon without exposing themselves to the certainty of being overtaken by night far from home. Indeed, there were many persons in most of the parishes dwelling so remotely from the church edifice that they were unable to reach it in time for the sermon delivered in the morning. The length of the journey when it was to be made by land, the dangers of storms when to be made by water, excessive heat in summer, heavy snows in winter, and flooded streams in spring,—all

<sup>1</sup> Henning's *Statutes*, vol. i., p. 290.

served to thin the ranks of the congregations. Had the minister considered it to be his imperative duty to visit constantly all those families residing in his parish who were prevented from being present Sunday after Sunday in the parish church, then but little time would have been left him to administer to the spiritual wants of the remainder of his flock.<sup>1</sup> It is quite probable, therefore, that he was forced to content himself with an occasional tour through those parts of the country, embraced within the boundaries of his living, which were difficult of access. This obstacle of remoteness was foreseen as early as 1632-3, and as a partial remedy for it, the General Assembly, that year, authorized the clergymen having large parishes to appoint deacons to read prayers in the neighborhoods lying far from the parish church.<sup>2</sup>

In the minister's absence from his regular pulpit, whether due to sickness or an imperative call elsewhere, the clerk was, by the nature of his office, impowered to read the lessons.<sup>3</sup> The minister, however, was very frequently assisted in the performance of this duty by some person specially appointed. By an Act passed in 1660-1, it was provided that, should a parish be unable to secure a clergyman to preach in the parish church every Sunday, a "grave and sober citizen of good life and conversation" should be chosen to read the lessons on the intervening Sabbaths.<sup>4</sup>

Some of the ministers preferred a reader to an ordained assistant. About 1675, Rev. Robert Parke, a

<sup>1</sup> *Virginia's Cure*, pp. 4-6, Force's *Hist. Tracts*, vol. iii.

<sup>2</sup> Hening's *Statutes*, vol. i., p. 208; Randolph MS., vol. iii., p. 223. A fixed sum was allowed the deacons thus appointed.

<sup>3</sup> MS. Laws of Va., 1643, Clerk's Office, Portsmouth, Va.

<sup>4</sup> Hening's *Statutes*, vol. ii., p. 47. This remained the law until the end of the century; see Beverley's *History of Virginia*, p. 210.

young divine, on arriving from England, became the guest of Mr. Randall Holt, who resided on Hog Island, a part of Surry county. During his stay there, he preached in the church at Lawne's Creek in the absence and without the consent of the regular pastor, Rev. William Thompson; and so favorable was the impression made by him, that it was soon whispered about that he would be an acceptable person to fill the pulpit of the lower parish church on those Sundays when Mr. Thompson would be required to officiate in the upper parish church. It was arranged by the vestry that a meeting of the citizens should be held on an appointed day, and that Mr. Parke should be requested to deliver a sermon on that occasion with a view to his becoming the assistant pastor. When Parke appeared, he was forbidden by the sheriff to occupy the pulpit. Mr. Thompson, it seems, had complained to the Governor and Council, sitting as an ecclesiastical court, and obtained an order prohibiting Parke's appointment to serve as his curate. The feeling of resentment aroused in the people who had assembled was so strong that it was with difficulty that the sheriff was able to disperse them.<sup>1</sup>

<sup>1</sup> Surry County Records, vol. 1671-84, p. 124, Va. St. Libr. It would be inferred from Thompson's defiance of the wishes of the congregation of the lower parish church, that he was an inducted minister; that is to say, one who had a freehold title to his living, and, therefore, one who was practically independent of his parishioners' favor. His conduct seems to reveal the arbitrary spirit in which it was always possible for a clergyman so placed to take advantage of his permanent position; and serves to illustrate further the Virginians' wisdom in refusing to induct all their pastors. Had Thompson been engaged from year to year, his desire to stand in well with his vestry would, perhaps, have caused him to submit to an appointment apparently called for by the people's religious welfare. See, however, an entry in the Surry County Records (vol. 1671-84, p. 124, Va. St. Libr.) showing the extraordinary esteem in which he was held. This is referred to later in the text.

In 1680, when the Colony was divided into about forty-eight parishes, there were only three served by readers alone; this is to be inferred from the fact that there were, at this time only three parishes lacking in clergymen.<sup>1</sup> But eleven years later, the number of vacancies was perhaps much greater, for the Council then considered it necessary to issue an order that a reader should be chosen wherever such a vacancy existed.<sup>2</sup> In 1691 also, Capt. Hugh Campbell, in a petition to the Governor, stated that the inhabitants of certain parts of Isle of Wight, Nansemond, and Norfolk counties, dwelling as they did at an extraordinary distance from churches and chapels-of-ease, were seldom able to be present at public worship; and that, as it would promote a more Christian manner of life among the people thus cut off, should some one be appointed in each of these places to read prayers and a sermon every Sunday (especially in winter when it was impossible for them to make the long journey to the nearest parish church), he was ready to convey a plantation of two hundred acres in area for the support of such a reader in each place; and that should the plantations he proposed to deed away for that purpose be inconveniently situated, then he would be ready to give six thousand pounds of tobacco for the purchase of that extent of ground wherever it should be thought to be more proper to buy it. This generous offer was accepted by the Governor; and the courts of the three counties were directed to take all the necessary steps to carry out Campbell's pious design. Nicholson, with that impulsive public spirit and burning zeal for advancing the church's welfare so characteristic of him,

<sup>1</sup> British Colonial Papers, vol. 1x., No. 410.

<sup>2</sup> Henrico County Minute Book, 1682-1701, p. 294, Va. St. Libr.

promised to give all the fees that, in the future, would be due him in these counties for marriage and tavern licenses, towards defraying the different expenses involved in establishing this endowment.<sup>1</sup>

Though the Colony's population was far more dispersed than that of England, and the character of its society necessarily more provincial, not so much from its remoteness from the society of the Mother Country as from the entire absence of cities, towns, and even villages, nevertheless, the general field of work to which the Virginian clergymen were confined must have been very similar to the field in which the English clergymen labored in the different English shires. On the whole, the life led by them was even more onerous, owing to the greater size of their parishes. In England, as the result of the greater concentration of the people, the parish did not cover any extraordinary extent of ground; and it followed that it was not difficult for the minister to traverse it even on foot, in a comparatively short time, in visiting the sick among the members of his congregation, in administering comfort to the afflicted, or in distributing gifts for the relief of the poor. In Virginia, on the other hand, the parish generally spread over such a wide area, and the number of inhabitants were, as a rule, so sparse, that the clergyman required the aid of a horse in getting from house to house; and even that means of locomotion did not always assure a rapid conveyance owing to the badness and circuitousness of most of the roads. The duty of visiting his parishioners could be performed, not in a few hours, as in England, but very often only in a couple of days. Each journey was attended with great

<sup>1</sup> Norfolk County Records, Orders Jan'y 27, 1691; see also Lower Norfolk County Antiquary, vol. i., p. 65.

fatigue, and at certain seasons, with extraordinary discomfort, and even danger, to horse and rider. Nor was he likely in those secluded plantation communities to have the tedium of the trip relieved by the occasional companionship of acquaintances by the way, or by exchanging greetings with travellers coming up from a direction opposite to the one in which he himself was going. But when the journey's end was reached, the Virginian clergyman received perhaps an even more hearty welcome than he would have received in an English home, because a visit from the minister was in the Colony a rarer event. If he was a man enjoying the esteem of his parishioners,—if he was also attractive in deportment and agreeable in conversation,—it can be easily seen that the hearts of the family he was stopping with would have gone out to him with an almost unbounded hospitality.



## CHAPTER XVIII

### The Clergy: Their General Character

**I**F we consider as a body the ministers who performed the various duties of their calling in Virginia during the Seventeenth century, there is no reason to think that they fell below the standard of conscientiousness governing the conduct of the English clergymen in the same age. The early history of the New World was adorned by no nobler group of divines than that group which gives so much distinction, from the point of view of character and achievement alike, to the years in which the foundation of the Colony at Jamestown was permanently laid. Among the company setting out for Virginia with the expedition of 1606 was Rev. Robert Hunt, a man who, as Governor Wingfield, his friend and companion, declared, "was not anywise to be touched with the rebellious humors of a popish spirit, nor blemished with the least suspicion of a factious schismatic."<sup>1</sup> The ships were, by unprosperous winds, detained six weeks in sight of the English headlands; and during this entire time, he lay so sick that his recovery was looked upon as impossible. The vessel bearing him waited for a change of weather at a point in the Downs hardly twenty miles away from his old home, and yet neither his proximity to that beloved spot, nor the illness weighing him down, nor

<sup>1</sup> *Works of Captain John Smith*, p. xci., Arber's edition.

unjust reflections and imputations leveled against him, could move him to abandon an enterprise in which his whole soul had been embarked. All these influences tugging so persistently at his heart to persuade him to turn upon his course, "all," exclaims his historian, with ardent admiration, "could never force him so much as a seeming desire to leave the business." The secret and wily plots under way to defeat the action would have been successful had he not, by his patience, pious warnings, and faithful and unselfish example, quenched the "flames of envie and dissension."<sup>1</sup> His discriminating glance detected John Smith's high and useful qualities; when the fellow councillors of that bold and impatient spirit would have shut him out of their body, it was the "good doctrine and exhortation," the sound common sense and eloquent persuasions of the devoted clergyman, which reconciled the perilous differences and led to Smith's admission to his rightful place at the board.<sup>2</sup> A fire broke out among the inflammable huts at Jamestown and destroyed Mr. Hunt's library, and every article he possessed except the clothes he was then wearing; but not one word of dissatisfaction or repining was heard to escape from his lips, though the loss, especially of his books, must have fallen heavily on his spirit. Remaining in Virginia until his death, he, throughout his whole pastorate, directed his thoughts and energies exclusively towards advancing the Colonists' spiritual welfare. Whilst he lived, so an eye witness declared, he so "comforted the wants and extremities" of the settlers that all their hardships seemed easy enough to bear as compared with what they had afterwards to undergo when he was

<sup>1</sup> *Works of Captain John Smith*, vol. i., p. 150, Richmond edition.

<sup>2</sup> *Ibid.*, p. 152, Richmond edition.

no longer on earth to teach them by word and example how to endure their sufferings with heroic patience and fortitude.<sup>1</sup>

Rev. Richard Buck, who succeeded Hunt, was a graduate of Oxford, and when the question of his appointment to Virginia arose, was earnestly recommended as a man zealous and faithful in his calling; and this encomium was fully confirmed by the entire history of his pastorate from the first hour of his arrival in the Colony.<sup>2</sup>

Rev. Alexander Whitaker, who left England about the same time,<sup>3</sup> was the son of one of the most celebrated preachers of that age; had won at Cambridge the degree of master-of-arts; and had filled a benefice in a northern shire with such untiring devotion to its duties that he had succeeded in securing the hearty approval and deep love of his parishioners. In the possession of a large salary that more than supplied him with all that he needed; with the assured prospect of even more lucrative preferment and far greater distinction in the church,—nevertheless, well born, well educated, well placed as he was, he voluntarily left his “warne neste” (to use the expressive phrase of Rev. William Crashaw), and, to the amazement of his kindred and friends, passed oversea to “help to bear the name of God to the Gentiles.”<sup>4</sup> What did he himself say of the heavy task he had undertaken at a sacrifice of all personal ease and promotion?

<sup>1</sup> *Works of Captain John Smith*, p. 959, Arber's edition. Wingfield declared that he always “took such notes in writing of Mr. Hunt's sermons as his capacity could comprehend”; Brown's *First Republic*, p. 31.

<sup>2</sup> *Purchas*, iv., p. 201. Buck came out with Sir Thomas Gates.

<sup>3</sup> Whitaker came out with Dale in 1611.

<sup>4</sup> Brown's *Genesis of the United States*, vol. ii., pp. 614-15.

"My coming to Virginia," he wrote, "has been prosperous, and my continuance here hath been answerable. I think I have fared better for your prayers and the rest. Though my promise of three years' service to my country be expired, I will abide in my vocation here until I be lawfully called hence." And there, in the zealous performance of his duties, he remained until accidentally drowned in the James River. In forming the "hard but heroical" resolution of going out to Virginia, he was aware that he would be confronted with innumerable perils to his personal safety; and in meeting death upon the waters, while perhaps on an errand of sympathy and consolation, he had only come to that premature end by the shock of fate which he doubtless anticipated in giving up his quiet parsonage amid the peaceful scenes of an English parish.<sup>1</sup>

Rev. Mr. Glover, a contemporary of Whitaker, did not survive so long; and, like Whitaker, paid with his life for his zealous self-sacrifice in settling in Virginia. He was one of the numerous victims of the new country's extraordinary unhealthiness before the plantations had spread out widely; so long, however, as his health permitted, he is described by one who was deeply interested in the Colonists' religious welfare at that early period as giving "his soule to Christ Jesus, under whose banner he went to fighte, and for whose glorious name he undertook the danger." Glover was a graduate of Cambridge, and by his faithful conduct while holding livings in Bedford and Huntingdon shires had come to be greatly revered and beloved. Like Whitaker, however, though perhaps past his youth, he felt that he was

<sup>1</sup> Brown's *Genesis of the United States*, p. 500; *Works of Captain John Smith*, vol. ii., p. 22, Richmond edition; Neill's *Virginia Company of London*, pp. 75, 76, 82, 100.

called to that wild and remote field of labor oversea; and he put aside every hope and comfort in his native land in his determination to obey. He gave up his life to the cause, apparently without one word of repining or lamentation, except perhaps that the work in which his heart was centred should be cut short by his death.<sup>1</sup> Well might the eloquent Crashaw, in dwelling with fervent admiration upon the firm resolution, the unyielding patience, the indefatigable zeal, and the indifference to suffering of these early clergymen, exclaim: "The ages to come will eternize your names as the Apostles to Virginia."<sup>2</sup>

In 1616, when Dale left the Colony to return to England, the pastors then occupying pulpits there were Wm. Wickham, who resided at Henricopolis; Alexander Whitaker, at Bermuda Hundred; Richard Buck, at Jamestown; and Mr. Meese, at Kikotan.<sup>3</sup> Wickham, it appears, had never been ordained, but after the death of Mr. Whitaker, owing to the smallness of the number of clergymen surviving, he was, it seems, impowered by the Archbishop of Canterbury, at the request of Governor Argoll, to administer the sacraments.<sup>4</sup> Two years later, Governor Yeardley reported that there were then (1619) only five pastors in Vir-

<sup>1</sup> Brown's *Genesis of the United States*, p. 619; Anderson's *Colonial Church*, p. 225.

<sup>2</sup> Anderson's *Colonial Church*, p. 238. One of the most learned and eloquent tributes ever paid to the zeal and piety of these early clergymen will be found in the address delivered by Mr. R. S. Thomas before the convention of the P. E. Church at Petersburg, Va., in 1898. This is one of several contributions, equally interesting and valuable, which Mr. Thomas has made to our knowledge of the church in Colonial Virginia.

<sup>3</sup> Campbell's *History of Virginia*, p. 117, Phila. edition.

<sup>4</sup> See Letter of Governor Argoll, June 9, 1617, Randolph MS., vol. iii., p. 137.

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ginia; and of these five, but three had received orders. Of the two who had never been ordained, one, Samuel Maycock, was a scholar of Cambridge University.<sup>1</sup> Francis Bolton, who filled first the living at Elizabeth City, and afterwards the one on the Eastern Shore, having, in 1621, been highly recommended to the Company for piety and learning, had been gladly accepted as the minister for appointment to the earliest vacant pulpit in the Colony. He seems, at one time, to have officiated as the rector of the church at Jamestown, the most important in Virginia; here he succeeded Rev. Hawte Wyatt, a brother of Governor Wyatt, and himself a graduate of an English university with the degree of master-of-arts.<sup>2</sup> Rev. Robert Staples, who emigrated in 1622, was a man of such remarkable qualifications that twenty conspicuous English divines had united in urging the Company to secure his services as a pastor for one of the Virginian benefices.<sup>3</sup> Rev. Thomas White, who went over about the same time proved himself to be so zealous and untiring in the performance of his duties, that the Governor and Council addressed a letter of special thanks to the Company for having dispatched to them so useful a minister.<sup>4</sup> At a later date, the authorities did not

<sup>1</sup> Brown's *First Republic*, p. 327; Neill's *Va. Co. of London*, p. 138. The three ordained clergymen were Rev. Richard Buck, Rev. Mr. Meese, and Rev. Mr. Bargrave. William Wickham and Samuel Maycock had not been ordained.

<sup>2</sup> Abstracts of Proceedings of Va. Co. of London, vol. i., p. 135.

<sup>3</sup> *Ibid.*, p. 166. The Company supplied both Rev. Robert Staples and Rev. William Leete with £20 respectively to meet the cost of their clothes and books, and to defray the charges of their voyage to Virginia.

<sup>4</sup> Randolph, MS., vol. iii., p. 166. Among the clergymen residing in Virginia in 1623 were Greville Pooley at Fleur de Hundred; Hawte Wyatt at Jamestown, David Saunders (Sandys) at Hog

content themselves with simply commending a divine who had set a lofty example to his fellow clergymen; in 1635, as we have already stated, they bestowed on the Rev. Willis Higby a grant of two hundred and fifty acres for his "faithful paines" in pursuing his calling, and for the quiet and pious life with which he had "seconded his doctrine."<sup>1</sup>

From the middle of the century to the end, as from the beginning to the middle, a large proportion of the clergymen were not only graduates of English universities, but also men of more or less distinguished social connections in England. Morgan Godwyn, at one time, in charge of the living of Marston parish adjoining Middle Plantation, was the great-grandson of a chaplain of Queen Elizabeth, afterwards promoted to the bishopric of Bath and Wells. His grandfather had filled the see of Hereford, whilst his father had died an arch-deacon.<sup>2</sup> Rev. Philip Mallory, who had won the degree

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Island; and George Keith at Elizabeth City; see *Colonial Records of Va.*, State Senate Doct., Extra, 1874, p. 37. About fifteen ministers arrived between 1618 and 1623, among them William Bennett, Jonas Stockton, Mr. Hopkins, Mr. Pemberton, and Henry Jacob. Rev. Robert Pawlett also came over in this interval; he seems to have been also a physician and surgeon.

<sup>1</sup> Tyler's *Cradle of the Republic*, p. 151. Among the clergymen residing in Virginia in 1680 were Benjamin Doggett, Charles Davies, Mr. Dudley, Mr. Scrimmour, William Butler, John Waugh, John Farnesfold, John Ball, Paul Williams, John Clough, Rowland Jones, Thomas Vicars, John Gwyn, John Sheppard, William Sellick, Thomas Taylor, William Williams, Robert Carr, Thomas Hampton, Robert Parke, William Housdon, John Gregory, John Wood, Henry Parkes, Thomas Teakle, John Lawrence, and James Porter. The following clergymen signed a memorial to Governor Andros in 1696:—James Blair, Cope Doyley, James Sclater, William Williams, Henry Pretty, Joseph Holt, Geo. Robinson, John Batte, Andrew and John Monro, Charles Anderson, Francis Fordyce, Jonathan Saunders, Jno. Alexander, and John Wallace.

<sup>2</sup> Neill's *Va. Carolorum*, p. 342.

of master-of-arts at one of the universities, was both the son and the brother of a dean of Chester, and had himself occupied a vicarage in County Durham before emigrating to Virginia; the personal esteem and confidence in which he was held, as well as his high reputation for ability, were shown by his selection in 1661 as the agent to be sent to England to advance the interests of the colonial Church; and in the same year, the General Assembly paid a warm tribute to his zealous and faithful conduct in performing his duties as a clergyman. Rev. Thomas Hampton was a bachelor-of-arts of Corpus Christi College. His family, like that of Mallory, had been intimately associated with the English Church; he himself was the son of a vicar; and a brother had long occupied the same office. Rev. Thomas Harrison, who, after acting as Berkeley's chaplain, was converted to the Puritan faith, was appointed, on his return to England, the chaplain of Henry Cromwell, a proof of his high standing as a man of talents and devoted piety. Rev. Justinian Aylmer was the grandson of an archdeacon of the same name, and there is reason to think identical with the Justinian Aylmer, who, in 1657, graduated from Oxford University with the degree of bachelor-of-arts. Rev. Rowland Jones, like so many others of the clergy who settled in Virginia, was sprung from a family prominent in the Church. His father was a vicar. Jones himself had enjoyed all the advantages of education which Merton College could afford. Rev. John Clayton, before removing to the Colony, had been vicar of Crofton Warwick; he was a graduate of Oxford University, a member of the Royal Society, and a student in the natural sciences of remarkable attainments. The book which he wrote touching the various natural



features of Virginia is one of the most valuable and entertaining composed in the Seventeenth century on the same or a kindred topic. Rev. James Blair had graduated from the University of Edinburgh as a master-of-arts, and was a man of such conspicuous ability, and such extraordinary vigour of character, that, in addition to serving as a clergyman, he filled many honorable and responsible positions, — was commissary of the Bishop of London, member of the Council, and President of William and Mary College.<sup>1</sup>

Robert Hunt, Richard Buck, Hawte Wyatt, and Francis Bolton, previous to 1630, and Justinian Aylmer, Rowland Jones, John Clayton, John Clough, and James Blair, after that date, were incumbents of the pulpit at Jamestown. That we are more familiar with their lives than with those of the same number of men who, during the same period, occupied, one after another, the same benefice in some other part of Virginia, is due only to the fact that they were associated with the history of the political capital and social centre of the Colony. Outside of the great towns of England, or the wealthiest and most populous of the English rural parishes, there was, in the course of the century, perhaps no single English living filled by a succession of clergymen superior to this body of men in combined learning, talents, piety, and devotion to duty; and yet there is no reason to think that the ability, zeal, and fidelity of these ministers who occupied the pulpit at Jamestown were overshadowing as compared with the same qualities in the clergymen, who, one after another, occupied any of the more important benefices in York,

<sup>1</sup> I am indebted for most of the preceding details to Mr. Tyler's *Cradle of the Republic*, a work full of interesting information obtained by original research; see page 87 et seq.

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Surry, Elizabeth City, or Gloucester counties, or the counties situated in the Northern Neck, or on the Eastern Shore. Among these clergymen towards the end of the century were such men as Rev. Bartholomew Yates and Rev. Peter Kippax, who were both bachelors-of-arts of Brasenose College, Oxford; Rev. Cope Doyley and Rev. Emanuel Jones, bachelors-of-arts of Merton and Oriel Colleges; Rev. St. John Shropshire, who had won the same degree at Queen's College<sup>1</sup>; Rev. James Clark, distinguished for culture as well as for piety; Rev. William Thompson, described in a public paper as an orthodox, faithful, and painstaking minister, who led a quiet, sober, and exemplary life, and was of a "conversation becoming his function unprovable."<sup>2</sup>

All the surviving records of the Seventeenth century go to show that, whatever, during that long period, may have been the infirmities or unworthy traits of individual clergymen, the great body of those officiating in Virginia were men who performed all the duties of their sacred calling in a manner entitling them to the respect, reverence, and gratitude of their parishioners. There were two influences quite sure to have made a deep impression even on those members of the profession, should there have been any, who were disposed to lead unbecoming lives:—first, that general attitude of hostility to all forms of dissoluteness which must have prevailed among the great majority of the ministers themselves, because, if for no higher reason, it was the only means of preserving the exalted position of their order; and, secondly, the force of public

<sup>1</sup> *Va. Maga. of Hist. and Biog.*, vol. viii., pp. 59–63. Rev. David Lindsay of Northumberland county was the son of a Scotch baronet and King-at-arms. See *William and Mary College Quarterly* for 1907.

<sup>2</sup> *Surry Country Records*, vol. 1671–84, p. 124, Va. St. Libr.

sentiment, which was not likely to have judged overleniently the bad conduct of those holding themselves out as the moral teachers and exemplars of the people. We have already seen how extremely active the grand juries and churchwardens were in presenting all persons guilty of immorality, and in this action they were simply reflecting the general temper of the community, which was certain to have been especially quick to condemn a clergyman's offenses because so much more injurious and pernicious in their influence. As early as 1631-2, when the Colony was still in its infancy, and the force of public opinion not yet as powerful as it was destined to become with the growth of population, the General Assembly passed an Act declaring that no divine should set an evil example by drinking or playing dice or cards; and again in 1643, it was provided that, should a clergyman conduct himself in a manner unbecoming his profession, the Governor and Council should punish him either by suspension or the infliction of such other penalty as their judgment suggested.<sup>1</sup>

If the clergyman who, by nature was inclined to be lax in his conduct had no other reason for self-restraint, his absolute dependence upon his vestry for his continuation in his place must have influenced him powerfully to act with prudence and circumspection. There is no evidence to show that that body was disposed to

<sup>1</sup> Hening's *Statutes*, vol. i., p. 157; MS. Laws of Va., 1643, Clerk's Office, Portsmouth, Va. An Act of Assembly passed in 1677 fixed the penalty of acting "scandalously" at the loss of half a year's salary; see Colonial Entry Book, 1675-81, p. 160. Governor Nicholson was instructed to use the "best means for the removal of any person already preferred who should appear to give scandall either by his doctrine or his manners"; see Instructions to Governor Nicholson, B. T. Va. vol. vii., p. 168.

consider an unworthy life on the part of their minister a matter of no great concern to themselves. There may have been times when they allowed an anxiety to keep the pulpit of the parish occupied to induce them to retain a pastor whose courses they had reason to criticise, yet we have the testimony of the author of *Leah and Rachel*, a careful observer of the condition of the Church in the Colony, that, even under these circumstances, they "still endeavoured for better" in his stead, and succeeded in obtaining him.<sup>1</sup> There are likely to have been few clergymen who would deliberately defy their vestry's disapproval when they were aware that the inevitable consequence, however delayed, was dismissal as soon as that body was able to secure a substitute. If a minister's conduct had been "abominably scandalous," we learn from Beverley that he found it far from easy to acquire another living; and this fact, which was clearly known to every member of the same calling, must have served as a powerful check upon any one who otherwise would have been indifferent to his vestry's displeasure. The room for employment outside of the plantation was not so great that a clergyman, with the most ordinary sense of discretion, could afford to run the risk of losing the only means of subsistence which at the time was in his reach. Let him give offense to his vestry by an im-

<sup>1</sup> "There came thither such as wore black coats and could babble in a pulpit, roar in a tavern, exact from their parishioners, and rather by their dissoluteness destroy than feed their flocks. Loath was the country to be wholly without teachers, and, therefore, rather retain them than be destitute; yet still endeavors for better in their places, *which were obtained*, and these wolves in sheep's clothing by their Assembly questioned . . . and some forced to depart the Country. Then began the Gospel to flourish." *Leah and Rachel*, p. 9, Force's *Hist. Tracts*, vol. iii.

proper life, and at once, owing to his uncertain tenure, the bread that went to the support of himself and his family, might, at the end of the annual contract, be taken away.<sup>1</sup>

It is probable that the "loose lives and ungodly conversation" laid by the intemperate Godwyn at the door of some of the Virginian divines of these times was merely a not unnatural distaste for the morbidly austere standards of Puritanism affected by that writer, standards that dismissed as unbecoming in a clergyman all those innocent gratifications in which the Church of England saw no real harm unless pushed to an extreme. The very ministers against whom Godwyn brought this charge in the spirit of a Bunyan or a Mather, who were outraged by the ringing of bells or the kissing of one's wife on Sunday, were perhaps the very persons whom Berkeley, a zealous Anglican, long afterwards eulogized as the "worthy men" driven by "Cromwell's tyranny" to Virginia.<sup>2</sup> Among the almost innumerable instances of disputed wagers in horse racing, card playing,

<sup>1</sup> As the Virginian clergyman's title to his benefice was subject to a contract renewable from year to year, he was, as the world goes, much more likely to have acted discreetly and becomingly than the English clergyman who held his living by a freehold tenure, a fact that made him practically independent of his congregation. We are referring only to those men in the Colony and Mother Country whose conduct was not governed by the highest motives alone.

<sup>2</sup> Godwyn's *Negro's and Indian's Advocate* was dedicated to Cromwell. Whilst breathing humane sentiments, this remarkable pamphlet is animated by much of that spirit which objected to bear baiting, not because it hurt the bear, but because it gave the spectators pleasure. For Berkeley's statement, see Henning's *Statutes*, vol. ii., p. 517. Berkeley declared on the same occasion that the ministers were well paid, and "by my consent," he added characteristically, "should be better if they would pray oftener and preach less."

and the like preserved in the county records, there is apparently not one in which a clergyman is entered as a party to the suit; and there is also but one case apparently in which a clergyman of those times participated even indirectly in a horse race.<sup>1</sup> And yet it was not at all opposed to what was thought becoming in the Anglican clergymen of that age to take part in those sports in the open air, and in those pastimes within doors which were enlivened by liberal betting.

<sup>1</sup> We find such a distinguished clergyman as Rev. James Blair serving as endman in a horse race which took place in Henrico county; *Henrico County Minute Book*, vol. 1682-1701, p. 268, Va. St. Libr.

## CHAPTER XIX

### The Clergy: Individual Offenders

**W**HAT were the serious offenses with which individual clergymen during the Seventeenth century were charged or of which they were convicted?

Perhaps the first minister to become involved in serious trouble was Rev. Anthony Panton, the rector of York and Cheskiack parishes. He was accused of having assumed towards Governor Harvey an attitude of such insolence and contempt as to encourage mutiny; and also of having denounced Secretary Kemp as a "jackanapes"; as a poor and proud fellow who tied up one of his locks with a ribbon "as old as Paul's"; and lastly as an officer unfit for his place, who was certain to be dismissed like his predecessor. A further charge brought against Panton was that he had counterfeited in a burlesque spirit a letter from the Archbishop of Canterbury. He was sentenced to pay to the King a fine of five hundred pounds sterling; to make public submission in every parish of the Colony; and to be deprived of the right to claim or acquire any property there. Finally, he was condemned to permanent banishment from Virginia; and should he return, he could be shot down on sight by the first citizen who saw him.

A sub-committee of the Privy Council made an investigation of the charges against Panton on his complaint after his arrival in England. In their report, they declared that they had received many "good testimonies" that he was an able preacher, diligent in his calling and without scandal in his life; that there was no proof that he had counterfeited a letter from the Archbishop of Canterbury; that, though the mutinies he was said to be guilty of were represented as extending over five or six years, the entire time covered by his residence in Virginia, yet only ten months previous to the date of his sentence, Harvey had presented him with a living, and in the document attesting the appointment, had commended him for his learning, conformity to the Church of England, pious spirit, and industry in his office. The Privy Council instructed the new Governor, Wyatt, to institute a careful inquiry into the circumstances of the case; and in the meanwhile, they suspended that part of Panton's punishment requiring his permanent banishment from Virginia. When the case came up before Wyatt and the Council sitting as the General Court, Kemp was summoned before them, but, without answering Panton's interrogatories, took ship for England, carrying off with him all the original depositions, on the strength of which the clergyman had been condemned. The Court, deciding in Panton's favor, ordered that thirty-four hundred and ninety pounds of tobacco should be paid him out of the fund derived from the sale of Governor Harvey's property remaining in the Colony. This was the amount belonging to Panton which had been seized immediately after his conviction. The combined action of the Privy Council and the General Court showed that Panton had been one of the



numerous victims of Harvey's arbitrary and grasping spirit.<sup>1</sup>

A charge brought against Rev. Thomas Hampton in 1646 was perhaps equally groundless. Having been appointed the guardian of the two orphan children of John Powell, of York, and curator of their estates, he removed one of them and most of the latter's property from that county without making the necessary provision for the support of the second orphan, who was left behind. On petition, he was deprived by order of court of the care of both children. There is no record of Mr. Hampton's defense, but as he continued to be one of the most prominent and useful clergymen residing in the Colony, it is probable that there was sufficient justification for his action to preserve his reputation for upright conduct unblemished.<sup>2</sup>

In 1649, Rev. Sampson Calvert, the incumbent of Elizabeth River parish in Lower Norfolk, was convicted of having committed adultery with the wife of Lawrence Phillips. Having, in a paper presented to the county court, declared his "heartly contrition" for so "foul an offense," he was ordered to read this confession on two successive Sundays in church to the assembled people. Phillips and his wife were, on each occasion, compelled to stand up in sight of the congregation with placards attached to their heads, on which were written an expression of great sorrow and a prayer for general forgiveness.<sup>3</sup> Ten years later,

<sup>1</sup> Randolph MS., vol. iii., p. 225; British Colonial Papers, vol. x., 1639-43, No. 32; Robinson Transcripts, pp. 185-6. When Panton was banished from the Colony, John Rosier succeeded him as the rector of York and Cheskiack parishes.

<sup>2</sup> York County Records, Orders Nov. 26, 1646.

<sup>3</sup> Lower Norfolk County Records, vol. 1646-51, p. 129. Phillips had no doubt been in complicity with his wife's dishonor.

a clergyman was sentenced by the General Court for immoral relations with a servant girl.<sup>1</sup> In 1654, Col. Edmund Scarborough, a man of rash and hasty temper, brought a double charge of adultery and poisoning against Rev. Thomas Teakle, but subsequently withdrew the accusation of adultery entirely, whilst that of the poisoning was shown to be equally unworthy of consideration. Mr. Teakle held his living forty years longer, one of the most respected as well as one of the most learned clergymen in the Colony. Vigorous, outspoken, and fearless, it is no cause for surprise to find that, on several occasions, he was a target for keen animosity. In the very year that Scarborough attacked him with such unjustifiable bitterness, Mary Powell, who was probably Scarborough's informant, was sentenced to receive twenty lashes, and to be banished from the county, because she had uttered a number of scandalous and abusive speeches in his detraction, which were proven to be altogether unwarranted in fact.<sup>2</sup>

In 1684, Samuel Mathews declared publicly that Rev. Mr. Ball, the clergyman occupying one of the livings situated in Henrico county, was "fitter to make a hangman than a minister." This disparaging remark, though it carried not even a hint of specific accusation, was promptly resented, and Mathews was indicted by the grand jury.<sup>3</sup> At a later date, Rev. John Bolton, who married the widow of Nicholas Spencer, the late Secretary of the Colony, became the victim of a plot directed against his reputation by an Irish woman and her accomplices; but the charge, after careful investigation, was shown to be without any ground. Mr.

<sup>1</sup> Robinson Transcripts, p. 242.

<sup>2</sup> Northampton County Records, vol. 1654-55, pp. 23, 94.

<sup>3</sup> Henrico County Records, vol. 1677-92, orig. p. 294.

Bolton was fully acquitted, and the woman ordered to be severely whipped.<sup>1</sup> In the course of the same year, he excited the county court's displeasure by acting in what appeared to be an arbitrary and presumptuous manner in taking possession of the estate of Rev. Mr. Scrimgour, who had died at the home of Mrs. Bolton, but he justified his conduct by showing that by will all of Scrimgour's property had been bequeathed to Mrs. Bolton's first husband and that as Mrs. Bolton's second, he was simply exercising his undoubted right to its control.<sup>2</sup>

Rev. David Lindsay was brought into court on several occasions, but for trivial offenses carrying no criminal intent, although amounting to a breach of propriety. In one instance, he refused to deliver up a small bill after its payment by his debtor; in another, he married two servants without their having obtained the consent of their owners, or showing that a license had been granted, or the banns published; and in a third, he withdrew a petition from the clerk's office without asking the justices' permission. In the first instance, he probably had some justification to offer, though not tenable in law; and in the second, he secured his release by proving that, at the time, he was not aware of the requirements of the statute; having come from the land of Gretna Green, he might well have deemed it no serious wrong-doing to dispense with all those formalities usually preceding the marriage ceremony. In taking the petition from the office, he was quite probably following a habit only too general even in these early times.<sup>3</sup>

In 1695, Rev. Stephen Gregg, of Abingdon parish in

<sup>1</sup> Westmoreland County Records, Orders July 26, 1694.

<sup>2</sup> *Ibid.*, vol. 1690-98, folio p. 122.

<sup>3</sup> Northumberland County Records, Orders Nov. 21, 1657; see also vol. 1652-66, p. 211.

Gloucester county, became involved in a heated controversy with his vestry, which ended with his expulsion. When an explanation of this summary course was demanded, that body justified themselves by asserting that Gregg had been guilty of misdemeanors. Gregg complained to the Governor and Council, sitting as an ecclesiastical court, that a general statement of this character was highly injurious to his reputation as a man and clergyman, and he stoutly declared that he was ready to defend himself against all imputations. The vestry then charged him specifically with the crime of sodomy, and the court directed the Attorney-General to investigate the grounds of the accusation.<sup>1</sup> ✓

One of the most remarkable instances of an unworthy clergyman appearing in the records of the Seventeenth century was that of Rev. Samuel Gray, who seems to have been a man of flippant and choleric impulses rather than of criminal. Gray was a nephew of the wife of Sir Edward Wood,<sup>2</sup> and was of such prominence in the community at one time as to become, it would seem, a trustee of William and Mary College. In 1698, having been greatly incensed by his slave, a mulatto boy, running away, he ordered him when caught to be severely flogged. On the culprit's kneeling before him to implore his pardon, Gray struck him a blow that brought the blood, and threatening to brand him with a red hot iron, did apply such an instrument, but not sufficiently long to hurt seriously. The boy was then bound to a tree, and while being whipped by a fellow slave, was accidentally struck in a vital part and killed. Gray was soon arrested and tried, but was acquitted,

<sup>1</sup> Orders of Council, May 14, 1695, Colonial Entry Book, vol. 1680-95.

<sup>2</sup> See letter of Lady Wood in B. T. Va., 1698, vol. vi., p. 373. Sir Edward Wood lodged in Somerset House.

although his conduct was loudly condemned. "I would not have had it happen in my family for three times his price," exclaimed the clergyman, "but," he added with callous resignation, "such accidents will happen every now and then." All the depositions relating to the case were ordered by the court to be returned to the Secretary's office for review by the Governor and Council, an evidence that the justices, should they have erred in their acquittal of Gray, desired it to be corrected by that body sitting as the final Court of Appeal.<sup>1</sup>

In 1699, Gray appeared again, but in a light that was only discreditable to his sense of dignity and discretion. In the course of that year, he sent to Speaker Carter, of the House of Burgesses, a copy of verses described as being "scandalous, libellous, and very reflective on the Government"; they are said to have satirized the King, the late Queen Mary, the Governor of the Colony, several eminent citizens, and the College of William and Mary. An acquaintance of Gray's testified that Gray had stated to him that the verses had been "put in his pocket by some idle rascal or other at Jamestown"; but when summoned before the Council he confessed to the authorship. Imploring that body's pardon for his offense, it was granted, but only after the verses had been solemnly submitted to the examination of the Attorney-General.<sup>2</sup>

<sup>1</sup> Middlesex County Records, Orders 1694-1703, p. 236.

<sup>2</sup> Rev. John Gourdon (Gordon) was Gray's accomplice in this undignified escapade. Both were probably very young. Gourdon was the incumbent of Wilmington parish, and in 1695 was not allowed by his congregation to preach, no very surprising step. We also find Gray complaining that he was deprived of the same privilege; see Lambeth Palace MS., Cod. Misc., No. 954, paper 65; Minutes of Council, June 2, 6, 22, 1699, B. T. Va., vol. liii.; Minutes of House of Burgesses, May 31, 1699, B. T. Va., vol. lii.

## CHAPTER XX

### Struggle to Enforce Conformity

DOWN to the passage of the famous Act of Toleration by Parliament in the reign of William and Mary, there was, with the exception of the brief period during which James the Second granted freedom of worship to all sects, a determined and persistent attempt on the part of the government of the Colony to enforce in religious belief and services a rigid conformity with the doctrines and ceremonies of the Church of England. One of the General Assembly's most important duties was to enact legislation designed to protect the Established Church against dissent and schism; and an equally important duty of the General Court in its ecclesiastical capacity, was to punish those guilty of defying this legislation by entertaining religious tenets and following rules of worship not authorized by the Anglican canons.<sup>1</sup>

From the foundation of Jamestown, the English Government showed great solicitude that conformity should be strictly maintained. As early as 1606, when instructions were drawn up by the King for the guidance of those having the first expedition in charge, an in-

<sup>1</sup> Thomas Ludwell, writing to Secretary Arlington in 1666, stated that "Quakers and all other non-conformists are tried before the General Court at Jamestown"; see *British Colonial Papers*, vol. xx., Nos. 125, 125, i.

junction was laid on the President, Council, and minister that, not only should the "true word and service of God be preached, planted and used" in the projected Colony, both among the English settlers and the savages, but that this word and service should be "taught and performed" according to the doctrines and rites of the Church of England alone.<sup>1</sup> In order to ensure universal conformity, the Divine and Martial Laws of 1611 required that every man and woman then residing in Virginia, or who should hereafter arrive, should make a candid confession of religious belief; if found deficient in religious knowledge, then he or she, as the case might be, was directed to apply at once to the minister for the proper instruction; and should the person fail to do so without excuse, then the penalty was to be one whipping for the first offense, two for the second, and for the third a daily whipping until compliance was proven.<sup>2</sup>

In the instructions given to Governor Wyatt in 1621, he was ordered to maintain in Virginia the form and spirit of the "Church of England as near as may be"<sup>3</sup>; and, in 1639, he received further instructions to regulate the religious affairs of the people by the English ecclesiastic laws and statutes.<sup>4</sup> In 1641, Berkeley was enjoined by the English Privy Council to see that "God Almighty was duly and daily served" according to the framework of religion represented by the Anglican Church; and in 1662, when he had been restored to the Governorship, this order was repeated.<sup>5</sup>

<sup>1</sup> Instructions to Virginia Company of London, 1606.

<sup>2</sup> *Divine and Martial Laws, 1611*, p. 17, Force's *Hist. Tracts*, vol. iii.

<sup>3</sup> Randolph MS., vol. iii., p. 161.

<sup>4</sup> Colonial Entry Book, 1606-1662, p. 213.

<sup>5</sup> *Ibid.*, 1606-1662, pp. 219, 266.

The effect of these instructions was seen in numerous Acts passed by the General Assembly at different times during the century. As early as the session of 1623-4, this body declared that all religious services held in Virginia should be required to follow as closely as possible "the canons in England, both in substance and circumstance."<sup>1</sup> That this law reflected the settled determination of all the higher authorities of the Colony at this time is shown by the Governor and Council requesting that the French and Walloon Protestant families, proposing to remove oversea, should not only take the oaths of allegiance and supremacy, but also agree to conform in their religious worship to all the Anglican rules.<sup>2</sup> In 1629, the General Assembly ordered every clergyman occupying a living in Virginia to give the strictest obedience to these rules or submit to severe punishment<sup>3</sup>; and again in 1631, the same body passed an Act to enforce the most rigid observance of the "canons and constitutions of the Church of England."<sup>4</sup> Twelve years later, it was provided that not only should all ministers conform to these canons and constitutions, but that all persons dissenting should leave the Colony.<sup>5</sup>

The oath which the churchwardens were required to take in 1664 shows how firm the General Assembly continued to be in its determination to maintain conformity. "The ceremonies and rites," that oath declared in referring to the service in the church, "shall be according to the orders and canons of England, and the Sacraments shall be performed according to the

<sup>1</sup> Hening's *Statutes*, vol. i., p. 123.

<sup>2</sup> British Colonial Papers, vol. i., Doct. 55.

<sup>3</sup> Acts of Assembly, March 24, 1629, Randolph MS., vol. iii., p. 214.

<sup>4</sup> Randolph MS., vol. iii., p. 216.

<sup>5</sup> Hening's *Statutes*, vol. i., p. 277.



Book of Common Prayer.”<sup>1</sup> At a meeting of the Council held in 1691, a complaint was made that some of the vestries were retaining ministers who had departed from the rules and doctrines of the Anglican Church; and a command was promptly issued that no pastor should be allowed to hold a living who refused to comply with the regulations of that Church.<sup>2</sup> Nicholson, in vacating the Lieut.-Governorship of the Colony in 1692, declared emphatically that the people of Virginia were faithful to the Church of England; and the general correctness of this statement was confirmed by Andros who succeeded him.<sup>3</sup> When Nicholson returned to the Colony a second time, he was impowered to remove any pastor whose doctrines gave rise to “public scandal”; and thereafter no minister was to be admitted to a pulpit who was unable to show a certificate from the Bishop of London to the effect that he conformed to the tenets and discipline of the Anglican Church.<sup>4</sup>

“Public scandal,” as the term went, seems to have been easily aroused in some quarters by very slight departures from the requirements of the ecclesiastical laws. For instance, in 1668, a violent controversy arose between Rev. Francis Doughty and two of his vestry, John Catlett and Humphrey Booth, because Doughty, in performing divine service, had been guilty of “abstraceons from chants.” This was only one of several delinquencies on his part hinting of non-conformity. In taking the oath as a clergyman, he had

<sup>1</sup> Northampton County Records, vol. 1664-74, p. 1.

<sup>2</sup> Order of Council is recorded in Henrico County Records, Orders May 15, 1691.

<sup>3</sup> B. T. Va., 1692, No. 128; Council Orders Sept. 20, 1692; Colonial Entry Book, 1680-95.

<sup>4</sup> B. T. Va., vol. vii., p. 168.

not only declared himself to be a true son of the Anglican Church, and confessed his belief in its Articles of Faith, but had bound himself to act consistently with all its various canons down to the least important.<sup>1</sup> The justices of Rappahannock, where Doughty's living was situated, were ordered by the General Court, to which, in its ecclesiastical capacity, complaint had been made, to try the charges against him. The issue must have been contrary to his wishes, for in a document recorded in the county he expressed his determination to transport himself out of the Colony of Virginia into some other country and climate that might prove more favorable to his "aged, infirm, and disordered body." His wife was, however, unwilling to depart, as she found Virginia "best agreeing with her health"; and she also could not make up her mind to leave her children, who were probably grown and settled.<sup>2</sup>

There was not the slightest toleration for religious views which seemed to give countenance to heresy.

<sup>1</sup> Westmoreland County Records, vol. 1655-64, p. 46.

<sup>2</sup> Rappahannock County Records, vol. 1668-72, pp. 40, 51, 119, 195, Va. St. Libr. There was a suggestion that Doughty had been somewhat lax in his personal conduct; in what direction it is not stated; and this probably explains his wife's refusal to accompany him in his self-banishment. As we have seen, he made a liberal conveyance of property for her support. The oath taken by Doughty as a minister was, doubtless, the one taken by all persons of his calling before entering upon their work. In 1668, Doughty was the pastor of Sittingbourne parish. Rev. John Waugh, of Stafford county, seems to have thought conscientiously that neither license nor banns were necessary preliminaries to the marriage ceremony, whether required by law or not. In 1674, he was suspended for marrying a couple without receiving any proof that a license had been obtained or banns published; see Westmoreland County Records, vol. 1665-77, p. 217. He committed the same offence in 1699; see Minutes of Council, Dec. 19, 1699, B. T. Va., vol. liii.; also Letters of William Fitzhugh, Oct. 27, 1690.

William Robinson, of Northampton, declared in a public argument in 1657 that Christ was never beheld by "carnal eye"; in uttering these words, he was accused of having committed a felony; and for this, he was arrested and carried to Jamestown to be tried by the General Court. A friend of Robinson, who held the same opinion, boldly announced that, in its support, he was ready to forfeit his life, "thus sealing it with his blood"; he also was promptly arrested and imprisoned; and was not released until he had given bond for his good behaviour.<sup>1</sup> In the very year in which these prosecutions took place in Northampton, Joseph Whitby and his wife, of Surry, were brought before the justices accused of entertaining "heinous tenets"; and it was only after expressing their deep contrition for their sin, and promising to abstain from such errors in the future, that they obtained their discharge.<sup>2</sup>

There was a large number of persons residing in the Colony about 1660, who rejected the doctrine laid down in the Book of Common Prayer, namely, that by baptism the infant is regenerated with the Holy Spirit. This opinion on their part seems to have made them as a class the target for the sharpest denunciation; they were described as schismatical persons, as persons averse to "the orthodox established religion," and governed by the new fangled conceits of their own heretical inventions. Whoever refused to baptize his child was compelled to pay two thousand pounds of tobacco for the offense<sup>3</sup>; and so serious was a case of

<sup>1</sup> Northampton County Records, vol. 1657-64, folio pp. 13, 27. Robinson, as will be found later on, was a Quaker.

<sup>2</sup> Surry County Records, vol. 1645-72, p. 113, Va. St. Libr.

<sup>3</sup> Neill's *Va. Carolorum* p. 293; Henning's *Statutes*, vol. ii., p. 166. This doctrine as to not baptizing was held by the Quakers as well as by the Puritans.

this character considered to be that it frequently went up to the General Court for settlement; in 1675, for instance, that court issued an order requiring the father named in it to baptize his child at once<sup>1</sup>; and in the course of the same year, the county court of Lower Norfolk directed John Biggs to repair to the minister of his parish for a like purpose. This he must have declined to do, as only a few months afterwards, he was fined thirty-five hundred pounds of tobacco under a judgment of the General Court, to which his obduracy had been referred for punishment.<sup>2</sup> Heretical opinions about the doctrine of baptism were not restricted to laymen; as early as 1645, Rev. Thomas Harrison, of Lower Norfolk, who had become a Puritan, and who soon abandoned his pulpit in Virginia, was indicted by the grand jury because he refused to perform the sacrament of baptism according to the canons of the Church of England.<sup>3</sup>

<sup>1</sup> Robinson Transcripts, p. 262.

<sup>2</sup> Lower Norfolk County Records, April 16, Aug. 18, 1675.

<sup>3</sup> Lower Norfolk County Antiquary, vol. ii., p. 12.

## CHAPTER XXI

### Dissent : The Quakers

OF all the non-conformists found in Virginia during the Seventeenth century the most important, from the point of view of numbers, were the Quakers. The spirit animating the members of this remarkable sect, as well as the authorities who sought to repress them, was clearly illustrated in a few words passed in a trial occurring in the General Court in 1661; a small company of Quakers had been arraigned before that Court as recusants and in defending themselves, one of them boldly exclaimed: "Quaker consciences must obey the law of God, however they suffer"; to which one of the judges returned the stern but significant reply: "There is no toleration for wicked consciences."<sup>1</sup> But it was not simply a keen repugnance to supposed heresy which lay at the root of the determined opposition to this sect. There were certain features characteristic of Quakerism which were regarded, not unnaturally, as directly inimical to the welfare of

<sup>1</sup> Records of General Court, 1660-62, p. 82. All the original records of the General Court were burned when Richmond was evacuated by the Confederates in 1865. We are indebted for information about this colloquy to a memorandum by Mr. Bancroft, who had had an opportunity of examining these records before they were destroyed.

the community as a whole. First, the members of this religious body aroused suspicion and distrust because their meetings were so often held in the profoundest secrecy; it was not unreasonably concluded that, having undergone such persistent persecution they would, when they came together in this dark and furtive manner; be strongly inclined to devise schemes of reprisal and revenge. Secondly, the necessity of paying tithes for the support of the religious establishment always bore very heavily on the resources of the persons assessed for the parish taxes; if the secession of a large number of the members of each congregation was to be permitted because they claimed to be Quakers, and these schismatics were to be exempted from the levy for the minister's maintenance on the plea that they were required to provide for their own clergyman, then it can be seen that the burden of supporting the Established Church, already so onerous, would have become unendurable.<sup>1</sup> Thirdly, one of the most important of all the duties imposed on each citizen was the defense of the community in the hour of internal commotion or invasion from without; and this duty seemed to be peculiarly imperative in Virginia because there the plantations were so often exposed to the atrocities of Indian incursions; when, therefore, a sect arose which demanded freedom from military service, on the ground that its members were opposed to all forms of war, the authorities quite properly saw in this principle one that would certainly diminish the fighting force of the Colony (a matter involving the safety of every man, woman, and child in it), and the security of every

<sup>1</sup> See Dom. Chas. II, vol. 56, No. 134, p. 426. It was said at the time that "half of the parish would become Quaker" if only to escape the payment of the regular tithes.

interest of its different communities.<sup>1</sup> Fourthly, disloyalty to the Church of England was thought to be at bottom disloyalty to its head, the King himself; dissent was a form of revolt and rebellion against all established order, and unless checked with sternness and determination might lead to universal disaffection and its attendant horrors, anarchy and blood-shed. One of the most remarkable rules of the sect was, in ordinary intercourse, to show no formal respect to persons in authority; it can be easily seen how quickly, in the suspicious state of the official mind, this singularity would be seized on, and its significance exaggerated into a deep seated hostility to the Government itself.

In the light of all these powerful reasons for opposing the sect, the only ground for surprise is that the persecution was not pushed to a greater extreme. And that it was not, was probably due to the fact that there was something in the Quakers' purely religious doctrines which made a strong appeal to the sympathies of many influential persons. The appeal to the lower section of the population was far stronger, certainly for a time. Nor is this to be wondered at. It should be remembered that the great body of the people were widely dispersed; that family after family occupied a separate plantation in the company of a few servants and slaves; that the life they led was, for the most part, lonely and uneventful; that they were familiar with nature in all those aspects so well calculated to make a very melancholy impression on their minds, such as the solitude of the boundless forests, the roar of the

<sup>1</sup> See case of Alexander Makenny, who, on being fined for not attending muster said: "His conscience did not permit him to bear arms"; Henrico County Records, vol. 1682-1701, p. 305, Va. St. Libr.

primæval woods in high winds at night, the terrible tropical storms in summer, which seemed to overwhelm the whole landscape, the great falls of snow in winter, the mighty floods in spring. Apart from the silent influence of these great natural phenomena, death, whenever it occurred in one of those remote homes, must have predisposed the heart to religion far more than in a crowded community where enlivening events were constantly taking place to divert the thoughts from whatever was sad. The very monotony and uniformity of existence on the plantation from day to day made the ear turn the more anxiously to voices that were appealing to the strongest emotions of the soul. Loyal as the great mass of people were to the Church of England, as represented in their ministers and parish churches, there was nothing in the manner in which it imparted its religious consolations to vivify, from time to time, the religious instincts of its congregations in the spirit of the modern religious revival. Now this was precisely what the early Quakers did. They found in those thinly settled and remote communities a population strongly disposed by their situation to religious thought, and ready to fall almost headlong into indulgence of religious emotions as soon as that chord in their hearts was touched. The missionaries of the sect made a direct appeal at the very hearth. Religion dropped the formalities of the liturgy and spoke to the spirit in the language of every day. It became personal, urgent, irresistible. It is not at all improbable that nothing but the unpractical features of Quakerism prevented a far more general conversion to that faith than seems to have really occurred.

The first Quaker missionary to appear in Virginia



seems to have been Elizabeth Harris, of London, who, arriving in 1656, remained only one year, although very successful in making converts. After her departure, she continued her work by writing letters and sending numerous books to those disposed to adopt the doctrines of her sect.<sup>1</sup> About 1657, the seeds which she had sown were zealously nourished by two other missionaries, Cole and Thurston by name, who laboured in the same virgin ground with such extraordinary activity that they drew down on themselves an order from the Governor and Council, sitting as the General Court, to leave Virginia by the first ship setting sail. In the interval, they were cast into prison and deprived of pen and ink for fear lest they should still persuade many citizens to incline a favorable ear to their tenets; but, during the winter, they were released and permitted to seek a refuge in Maryland.<sup>2</sup> During 1657 also, William Robinson held conventicles in private houses on the Eastern Shore; and for allowing him this privilege, one well known citizen who sympathized with the sect to such a degree that he refused to heed the warnings of Col. John Stringer, the presiding justice of Northampton, was summoned before the county court and required to give bond not to repeat the offence.<sup>3</sup> Robinson seems to have spent fourteen months in the Colony with a single eye to spreading the peculiar doctrines of the Quakers; and in this work of propagation, was assisted with great energy by Robert Hodgson and Christopher Holden, among others. His mission was not confined to the Eastern Shore; he did not stop

<sup>1</sup> Weeks, pp. 13, 14. The Quaker sect was first heard of about 1647.

<sup>2</sup> Robinson Transcripts, p. 243<sup>2</sup>.

<sup>3</sup> Northampton County Records, vol. 1657-1664, f. p. 12.

until he had visited all parts of the Colony; nor did he altogether escape the penalty of such extreme boldness, for at least six of the fourteen months covered by his sojourn in Virginia were passed in jail; to which he was committed as probably the only means of restraining his zeal. But this was a mild fate in comparison with what afterwards overtook him in New England, where he showed the same fearless persistency, for there, all other penalties having proven unavailing, he was forcibly quieted by the gallows.<sup>1</sup>

Among the missionaries following in Robinson's footsteps were Elizabeth Hooton, Joan Brocksoppe, Mary Thomas, and Alice Ambrose. It is quite probable that, in the eyes of the authorities and all other ardent supporters of the Established Church, the action of these women in going about like the field preachers of a later day was all that was wanted to confirm the general impression as to the revolutionary nature of the doctrines they advocated; it may well have been thought that the spirit of revolt had so inspired the hearts of persons belonging to the new religious order that it had induced even members of the female sex to throw off all their natural modesty and reserve, and manlike to wander about seeking whom to turn to their pernicious and dangerous notions. But perhaps it was the exhortations of these very female missionaries which secured the deepest lodgment in the breasts of that poor and ignorant class among whom, owing to their greater susceptibility to a passionate appeal to their emotions, the larger number of the converts to Quakerism were found, for it was in the sermons of these female preachers that the greatest tenderness and sympathy lurked, not infrequently associated with a degree of moving

<sup>1</sup> Neill's *Va. Carolorum*, p. 285.

eloquence unsurpassed in the sermons of the male preachers themselves.

In 1658, it was enacted that every Quaker should be banished from the Colony.<sup>1</sup> Already the General Court had entered an order prohibiting all masters of ships trading with Virginia to import any person of that sect; and in case they did so, commanding them to carry such person away at the first sailing.<sup>2</sup> The firm measures taken for the Quakers' repression at this time are the more remarkable because, during the Protectorate's existence, there seems to have been no spirit of intolerance shown for what, at a later period, was so severely punished as non-conformity. There was in the Colony at this time ample room for a body so much opposed to the tenets of the Anglican Church as the Puritans, but there seems to have been as little room as ever for the Quakers, simply because the principles and doctrines they advocated were looked upon as dangerous to all forms of civil administration, whether presided over by a King or an elected ruler. By 1659, so many of the inhabitants of York had been converted to the new sect's beliefs that the judges of the county court were greatly alarmed, not from a religious, but from a political, point of view; they declared that the seduction of so many indigent and grossly ignorant persons might end in "the disturbance of the country's peace and the country's government"; and they, therefore, commanded the sheriff and constable to attend wherever a Quaker was about to exhort the congregated people and to warn them to disperse; and also to forbid all owners of plantations to suffer such meetings to be held on their lands. And

<sup>1</sup> Hening's *Statutes*, vol. i., pp. 532-3.

<sup>2</sup> Robinson Transcripts, p. 243<sup>2</sup>.

these officers were also directed to make a report to the nearest justice of the peace in order that he might take steps to prevent the repetition of such "routs and unlawful assemblies."<sup>1</sup>

So determined were the Quakers to spread their doctrines far and wide that they appear to have continued to defy openly the guardians of the law, for in the course of the same year, the county court of York found it necessary again to interfere, after a second time denouncing the propaganda of the sect as "tending to the dishonor of God, the seducing and misleading of many of the inhabitants, and ye disturbance of ye country's peace." Mr. Thomas Bushrod, a convert, had requested Rev. Philip Mallory to arrange a conference between certain representatives of the Quakers and himself; and to this, Mr. Mallory gave a ready assent provided that the justices of the county court did not disapprove of the step. When the latter's consent was asked, they were at first content to express the hope that the "proposed conference would prevent for the future all occasion of frequent meetings and unlawful assemblies, and would undeceive ye much seduced and misled people, especially of this county." As, however, they looked upon the conference as an event of extraordinary moment, they would not, though favoring it themselves, assume the responsibility of allowing it without first submitting the proposal to the Governor and Council.<sup>2</sup>

This attitude of the justices of York county supports our surmise that no serious objection would, during the Puritan Supremacy, have been offered to the Quakers' missionary zeal had it not been attended with

<sup>1</sup> York County Records, vol. 1657-62, p. 163, Va. St. Libr.

<sup>2</sup> *Ibid.*, pp. 170-1, Va. St. Libr.

a certain degree of disturbance which jeopardized the safety of the community. And so far was this disorder carried in all parts of the Colony, in spite of the Act banishing such persons from Virginia, that, in the winter of 1659-60, the General Assembly was moved to denounce the entire sect "as an unreasonable and turbulent sort of people," who, meeting in large congregations, daily proclaimed and taught "lies, miracles, false visions, prophecies and doctrines" tending to "destroy religion, laws, communities, and all bonds of civil society"; and who would leave it to the caprice of "every vain and vicious person whether men shall be safe, laws established, offenders punished, and governors rule." In order to bar from Virginia any additions from the outside to a sect whose teachings were thought to be so dangerous to the Colony's peace and welfare, the General Assembly imposed a fine of one hundred pounds sterling on every captain of a ship importing a Quaker; and every Quaker exhorter to be found in any county was to be arrested and imprisoned without privilege of bail until security had been given that he would leave the country and never again return; and should he, in spite of this warning, re-enter the Colony, he was to be prosecuted as a contemner of the laws, and banished a second time; and if he again came back, he was to be punished as an ordinary felon. As a means of discouraging all persons disposed to receive the Quaker missionaries in their homes, it was provided that, whoever gave private entertainment to a member of that sect, should be liable to a fine of one hundred pounds sterling, or twenty-five hundred dollars in modern values.<sup>1</sup> Severe as this law was, its harshness was less than that of the regulations touching Quakers pre-

<sup>1</sup> Henning's *Statutes*, vol. i., p. 533.

vailing in New England. It was not until the Quaker had been twice banished without further punishment that he was proceeded against in Virginia with any real sternness. In Massachusetts, on the other hand, he would have been severely flogged on his second appearance; and on his third, would have forfeited his life.

Under the influence of this more stringent Act, as well as of his own personal animosity against the Quakers, Governor Berkeley, in the following year, wrote to the sheriff of Lower Norfolk a letter in which he sternly reproached him with remissness of duty in not putting a summary end to the meetings of what he denounced as that "pestilential sect." "I charge you," the letter closed, "by virtue of ye power ye Grand Assembly has intrusted me with not to suffer any more of their conventicles."<sup>1</sup> That the statute did not always remain a dead letter in other counties is proven by the action of the justices of Northampton in 1660:—William Colbourne, having been arrested, and brought before them accused of showing hospitality to Quakers, and having boldly declared that he would continue to do so, the court ordered execution to issue at once against his estate for the collection of the fine of one hundred pounds sterling which they had sentenced him to pay.<sup>2</sup> It is probable that his defiant attitude led to the strict enforcement against him of the law, for, in the course of the same year, when Henry White and Thomas Leatherbury were summoned before the same justices for a like offence, the latter were satisfied with commanding the two to appear before the Governor and Council; in the meanwhile,

<sup>1</sup> Lower Norfolk County Antiquary, vol. iii., p. 102.

<sup>2</sup> Northampton County Records, Orders Jany. 28, 1660; also vol. 1657-64, p. 88.

they were discharged without their having been subjected to a fine. And the same step was taken by the court in the case of Ambrose Dixon. As we have already seen, one of the principal citizens of Northampton had been simply required to give bond that he would not again entertain William Robinson, perhaps the most conspicuous of the Quaker missionaries; this person was dealt with thus tenderly although it was known that he was constantly engaged in violating the statute forbidding the importation of members of that sect; under pretence of transporting them up the Bay to Patuxent, he would land them at Nassawaddox, where they were received by Leven Denwood. At this place there was a building, described as a "ten foot house," which was used as a church by the sect; and it continued to serve this purpose until it was converted into a barn for the storage of wheat.<sup>1</sup>

It is evident from the surviving records that the county court of Northampton at this time was disposed to be as lenient as the county court of York in the treatment of the Quakers; and at the bottom of this disinclination to be as harsh as the statute enjoined lay, in both cases, the same reasons, namely, a clear perception of what was good in the purely religious teachings of that sect, and the recognition of the ignorance of the class upon whom its peculiar doctrines had made the deepest impression. The justices could not fail to acknowledge, at the very moment they deprecated the economic and political consequences of a schism of this kind, that most of these missionaries were animated by a true religious zeal; and that it was not at all strange that so many unlettered and unthinking people should be persuaded to accept all

<sup>1</sup> Northampton County Records, vol. 1657-64, folio pp. 82, 84.

their principles. It was only in a case like William Colbourne's, who showed a thoroughly untractable and defiant spirit, that the justices seem to have been aroused to enforce the law in all its rigid requirements.

Conscious of their own innocence of harboring any design against the existing political order, the converts to Quakerism were disposed to resent with great bitterness the interference with their liberty of opinion and worship. This is shown by an interview which took place, in 1661, between Rev. Justinian Aylmer and Thomas Bushrod, perhaps the most prominent citizen of that faith residing in York county. Aylmer had gone on board of a vessel riding in York River to purchase a servant. Bushrod happened to be there also, and although Aylmer endeavored to avoid him, yet he came forward and heaped on the clergyman's head "scandalous, reproachful, and abusive language," such as "ugly, lying knave and rogue." Not satisfied with these opprobrious words, Bushrod further exclaimed:—"Rev. Philip Mallory and yourself are a couple of episcopal knaves"; and then added, with an air of defiance:—"The Quakers shall and will continue their meetings; they will meet the next Sunday; and my wife shall be there." He then challenged Mr. Aylmer or Capt. Augustine Warner, a member of the Council, or any other person in his hearing to "disturb them if they durst." In reporting this scene to the justices of the county court, Aylmer concluded with an expression which throws a vivid light on the combination of reasons lying at the bottom of the strong opposition in that age to the propagation of Quaker doctrines:—in openly daring Captain Warner or himself to interfere, Bushrod, Aylmer declared, "struck at Church and State at one stroke according



to ye usual practice" of that sect. Another witness, present on the same occasion, deposed that, when Mr. Aylmer asked Bushrod to bring his wife to the parish church, Bushrod denounced the clergyman as a "blind priest"; and when reproved for such abuse of a minister in orders, he replied:—"They are all anti-Christ and proceed from ye Pope." "Mr. Warner," he added, turning sharply on that gentleman, "I will not meddle with you as a Councillor, but you are a rogue and a dog." A warrant was issued a short time afterwards for Bushrod's arrest, and he was commanded to appear on the following day at Mr. Reade's house, where the Governor, Council, and other magistrates happened to be holding a court. All the witnesses were also summoned to testify on the same occasion.<sup>1</sup>

The same year, Thomas Forby, a citizen of Lower Norfolk, was presented by the grand jury for permitting an assembly of Quakers to be held at his residence; and having been arrested for the offence, was, by order of the justices, escorted by the sheriff to Jamestown for trial by the General Court for "breaking and contemning ye law" established against that sect.<sup>2</sup> Isabel Spring, a woman whose home was situated in the same county, for having denounced Mr. Thomas Browne in opprobrious language because he had come to her house to prevent a meeting of the Quakers, was condemned to receive twenty strokes of a whip on her bare back, and to remain in the sheriff's custody until she should acknowledge her great fault on her knees in

<sup>1</sup> York County Records, vol. 1657-62, pp. 325, 328, 338-9, Va. St. Libr.

<sup>2</sup> Lower Norfolk County Antiquary, vol. iii., p. 105; Lower Norfolk County Records, vol. 1656-66, p. 302. See will of Felix Forby of England, *Va. Maga. of Hist. and Biog.*, vol. xii., p. 398.

the presence of the Court. As she promised to abstain from committing the same offence in the future, the corporal punishment was remitted.<sup>1</sup> In the following year (1662), several members of the Yates, Porter, and Whitehurst families, belonging to Lower Norfolk, and also Mrs. Emperor, wife of one of its most prominent and wealthy citizens, were summoned for attending a similar meeting. Berkeley was now Governor and it was due to his great activity that all those arrested were promptly brought to Jamestown for trial; in the course of the same year, a large number were arraigned before the bar of the General Court, and these, there is reason to think, included the persons taken up in Lower Norfolk county.<sup>2</sup> That the latter were not discouraged from assembling again when they had obtained their release is shown by the arrest of nearly the same individuals on the occasion of a meeting held in May of the following year at the house of Richard Russell, who was fined an hundred pounds sterling for allowing it to take place there. And in spite of this intervention of officers of the law, a second meeting was held in June; and a third in November.<sup>3</sup>

<sup>1</sup> Robert Spring was on one occasion indicted for absenting himself from church, which he had done, no doubt, because he was a Quaker in faith; Lower Norfolk County Records, vol. 1656-66, p. 368<sup>2</sup>; see also *ibid.*, pp. 305-6; Lower Norfolk County Antiquary, vol. iii., p. 105.

<sup>2</sup> Bancroft's *History of the United States*, vol. ii., p. 201. Mr. Bancroft quotes from General Court Records now destroyed. One of the recusants mentioned by him was named Owen or Owens. Among the Quakers arrested in Lower Norfolk County was Thomas Owens, and this identity of names seems to confirm the supposition that the Lower Norfolk County Quakers were among those arraigned in the General Court in 1662; see also Robinson Transcripts, p. 177.

<sup>3</sup> Lower Norfolk County Records, vol. 1656-66, pp. 360<sup>2</sup>, 386; Lower Norfolk County Antiquary, vol. iv., p. 78; see also vol. iii., p. 146.

During the same years, the Quakers had been equally active in York county. In 1661, a proclamation had been issued in the name of Charles II, recently restored to the throne, in which a gracious pardon was offered to every member of that sect guilty of a breach of the laws relating to uniformity of worship; but a stern warning was given that a repetition of the offence would be visited with severe punishment. Berkeley promptly directed the attention of the judges of York to this proclamation. It seems that, in that county, as in Lower Norfolk, the most zealous and fanatical disciples of the Quaker missionaries were found among individuals of the female sex<sup>1</sup>; Berkeley in his communication, therefore, instructed the justices that all women, who, after the royal Proclamation had been read, should attend the Quaker assemblies and publicly declare their "schismatical and heretical doctrines and opinions" should be at once tendered the oaths of allegiance and supremacy by the nearest magistrate, and on their refusing to take these oaths, should be led away to prison. The Quakers were now holding secret meetings in the woods; and that these meetings were supposed to have a political as well as religious significance of an alarming character was shown by this order, for the oaths of allegiance and supremacy were generally used for the detection of political infidelity and disloyalty. Among the women who had joined the sect was Mrs. Mary Chisman, wife of a leading citizen, and it was reported to the court that she had been seen at these furtive assemblages in the forests in the company of several of her slaves. The attention of her husband and herself was called to the proclamation, and she was warned

<sup>1</sup> Seven women were among the persons arrested in Lower Norfolk County, December 15, 1662.

that, should she repeat her offence, her arrest would follow, while Chisman himself was ordered to keep his negroes and the members of his family away from such meetings.<sup>1</sup>

<sup>1</sup> York County Records, vol. 1657-62, p. 324, Va. St. Libr.

## CHAPTER XXII

### Dissent: The Quakers (*Continued*)

THE Quakers had now become so bold and active that the General Assembly deemed it advisable to pass additional legislation for their repression. In March 1661-2, it was provided that all the penalties of the Elizabethan statute, passed for the punishment of those failing to attend the services of the Established Church, should be put in operation with a view of stamping out Quakerism; for instance, all persons remaining away for the period of a month were to be mulcted to the extent of twenty pounds sterling, and for the period of one year, to the extent of two hundred and forty pounds.<sup>1</sup> That these penalties were really intended to be carried into effect is shown by the fact that, in 1663, three Quakers residing in Lower Norfolk were each fined twenty pounds sterling because they had refused to attend the parish church for four Sundays in succession.<sup>2</sup> And in the course of the same year,

<sup>1</sup> Hening's *Statutes*, vol. ii., Acts 1661-2. An Act, passed this year, imposed a fine of 200 lbs. of tobacco on each Quaker presented by the churchwardens of his parish for attending a religious meeting of his sect; see Hening's *Statutes*, vol. ii., p. 48.

<sup>2</sup> Lower Norfolk County Records, 1656-66, p. 363<sup>1</sup>. On the other hand, Richard Yates, Richard Russell, Anne Godby, John Porter, and Mrs. Mary Emperor, all zealous Quakers of the same county, were mulcted to the extent of only fifty pounds of tobacco for not attending church; perhaps, on a single occasion,

Ambrose London, of Northampton county, was fined for the like offence one thousand pounds of tobacco; but the punishment in his case was perhaps increased because he appeared in court clothed in the peculiar garb of his sect, and demeaned himself insolently in replying to the justices' questions.<sup>1</sup> The fine for being present at an assembly of Quakers was also strictly enforced; thus every one of the twenty-two persons attending the meeting held in Lower Norfolk in November, 1663, to which reference has already been made, was required to pay two hundred pounds of tobacco as the law prescribed.<sup>2</sup>

In the preamble to the statute passed in March 1662-3 (which was perhaps a re-enactment of a measure adopted in a previous year), it was stated that the Quakers were now assembling in great numbers in different parts of the Colony; that under the pretence of religious worship, they were spreading terror among the people and endangering the public peace; that they kept up a constant and secret correspondence with each other; and that they separated themselves from the rest of the King's subjects and avoided the regular congregations. The ship-master who had brought in a Quaker was ordered not only to carry him away at the first sailing, but also, during his sojourn in the Colony to shut him up so closely that he could find no opportunity to proclaim his "seditious tenets."<sup>3</sup> The

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however. At the same time, Porter was fined three hundred and fifty pounds of tobacco for laboring in his tobacco fields on Sunday; see Lower Norfolk County Records, vol. 1656-66, p. 396<sup>2</sup>.

<sup>1</sup> Northampton County Records, vol. 1657-64, p. 188.

<sup>2</sup> Lower Norfolk County Records, 1656-66, p. 386; Henning's *Statutes*, vol. ii., p. 48.

<sup>3</sup> Henning's *Statutes*, vol. ii., pp. 181-3. It was provided by this Act that every Quaker who should be indicted for having been

ground for suspicion against the sect was very much increased at this time by the conduct of John Porter, of Lower Norfolk. Porter, who was a member of the House of Burgesses, was reported by the sheriff of that county to be so well affected towards the doctrines of the Quakers that he opposed the baptism of children; he admitted the correctness of the charge, and when the oaths of supremacy and allegiance were tendered to him, declined to take them; and for this refusal was promptly expelled from the body.<sup>1</sup>

Whilst there is no evidence that the native Quakers, in spite of the bitter feeling against them aroused in the breasts of the authorities by their persistent contempt for the law, were treated with greater severity than was reflected in the imposition of a fine, yet it is not surprising to discover that the alien members of the sect, who came into the Colony and deliberately defied all the Acts passed for their exclusion and repression, were sometimes punished rather harshly; for example, in 1663, Mary Thompkins and Alice Ambrose, two female missionaries, who had, no doubt, been more than usually bold in trampling these statutes underfoot, are said to have been sentenced to receive thirty-two lashes apiece, and to be drawn to the pillory with a noose, having a running knot, tied about their necks.<sup>2</sup> The penalties inflicted, however, continued to have as

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present at an assemblage of as many as five persons, over sixteen years of age, of his sect, should, for the first offense be liable to a fine of 200 lbs. of tobacco; for the second, to a fine of 500 lbs.; and for the third, be banished. Every ship captain convicted of importing a Quaker should be compelled to pay 5000 lbs. of the same commodity.

<sup>1</sup> Hening's *Statutes*, vol. ii., p. 198; Randolph MS., vol. iii., p. 282.

<sup>2</sup> Neill's *Va. Carolorum*, p. 299. The accounts of the sufferings endured by the missionaries must be received with some reservation, as there was a disposition to exaggerate the extent of the martyrdom in this as in other cases recorded in history.

little effect as before in either dispersing or restraining the Quakers. In but one instance does any person of that faith appear to have been frightened into renouncing the creed; this occurred, in 1663, in the case of Elizabeth Emerson, of Lower Norfolk; who, when arraigned in the county court, promised that, should her fine be remitted, she would abandon the sect, and thereafter refuse to attend their meetings.<sup>1</sup> Among those presented to the General Assembly by a jury of inquest sitting in Nansemond county in the course of this year, were several Quakers, who had declined to be present at the regular services in the parish church.<sup>2</sup> William Edmundson, a friend of George Fox, preached, in 1671, in Nansemond and Isle of Wight to numerous congregations in sympathy with his doctrines; and so powerful was the impression produced by him that, in 1675, a special order had to be issued for the suppression of all the local conventicles, most of which were probably confined to his followers.<sup>3</sup> There are indications that, during this year, the Quakers were also very active in making converts on the Eastern Shore. William Lewis and Samuel Young, of Northampton, declined to take the oath when impanelled on a jury, while George Johnson and Timothy Coe, of Accomac, were presented because, with numerous companions, they were in the habit of attending Quaker meetings, and probably exhorting the assembled people.<sup>4</sup>

<sup>1</sup> Lower Norfolk County Records, vol. 1656-66, p. 400. She was probably the wife of Nicholas Emerson, who was frequently fined for attending Quaker meetings.

<sup>2</sup> Sept. 10, 1663, Colonial Entry Book, vol. lxxxvi

<sup>3</sup> *William and Mary College Quart.*, vol. vii., p. 211; Robinson Transcripts, p. 262.

<sup>4</sup> Northampton County Records, vol. 1674-79, p. 46; Accomac County Records, vol. 1676-78, p. 48.



The most prominent Quaker in Henrico county at this time was John Pleasants, a planter of considerable wealth, and of a high reputation for sense and character. He had been convicted previous to 1679 for violating the provisions of the statute passed for the repression of his sect, but the sentence was not put in force. On his persisting in allowing Quaker services to be held in his house, he was warned that, if he continued to do this, execution would be ordered pursuant to the old judgment.<sup>1</sup> As Pleasants refused to desist, he fell a victim to what must have proved to him to be a peculiarly annoying form of persecution:—he and his wife were indicted for living together without the sanction of legal marriage simply because they had been united after the ordinary Quaker manner; and for their alleged illicit cohabitation, each was fined two hundred and forty pounds sterling on the ground that they constituted, not one couple, but two separate persons. In addition, a fine of twenty pounds sterling was imposed on each of them for every month they had respectively refrained from attending services in the parish church; a fine of two thousand pounds of tobacco for refusing to baptize their children; and also one for five hundred pounds for permitting conventicles to be held in or near their residence. Had the total amount of these double penalties been collected by execution on Pleasants's estate, it would have precipitated ruin upon his affairs; but fortunately for him, Culpeper intervened under the authority of the order recently promulgated in England granting liberty of conscience to all the subjects of the King.<sup>2</sup> That Pleasants en-

<sup>1</sup> Henrico County Records, vol. 1677-92, orig. p. 116. The English Conventicle Act, passed in 1664, imposed penalties on those taking part in religious meetings in private houses.

<sup>2</sup> Henrico County Minute Book, 1682-1701, p. 40, Va. St. Libr.

joyed the esteem and good will of the community in which he lived is shown by his election in 1692 to the House of Burgesses; but as he declined to take the required oaths, he was not allowed to occupy his seat.<sup>1</sup>

John Lend, a Quaker, who died in Henrico county about 1681, dated his will the "Tenth day of the Sixth Month 1679." As the witnesses, who belonged to the same faith, refused to prove the instrument by taking the usual oath, or the wife to follow the ordinary legal formalities, the justices had no other alternative but to place the estate in the hands of an administrator of their own appointment.<sup>2</sup> It shows how far the Quakers at this time carried their peculiar doctrines that one of this religious body residing in this county whose wife had been ravished by a negro refused to prosecute the criminal.<sup>3</sup> This man's daughter, when called upon to testify in a case in court, declined for conscience's sake to take the oath; put in jail, she begged the justices to excuse her delinquency; and on her father's humbly seconding her request, they remitted her fine and released her from prison in consideration of her tender years.<sup>4</sup>

The heavy pecuniary penalty for failure to attend

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British Colonial Papers, vol. xlviii., No. 11. Culpeper's words were: "Pursuant to Instructions for liberty of conscience, I stopped execution against a Quaker, John Pleasants." The date of this letter was Sept. 20, 1683.

<sup>1</sup> *Va. Maga. of Hist. and Biog.*, vol. vii., p. 171. Notwithstanding the fact that Pleasants was a Quaker, he bequeathed his slaves to his children as if they were merely an important part of his livestock; see Henrico County Records, vol. 1677-92, orig. p. 328; also Orders, Oct. 1, 1690.

<sup>2</sup> Henrico County Records, vol. 1677-92, orig. p. 196. William Randolph was appointed.

<sup>3</sup> *Ibid.*, vol. 1677-92, orig. p. 194.

<sup>4</sup> *Ibid.* vol. 1682-1701, p. 109, Va. St. Libr.

services in the parish church could not, at this time, have been very strictly enforced, for, in 1685, Edward Thomas, of York county, a member of the sect, who had not shown himself there for the space of a whole year, was merely required to give bond for good behavior.<sup>1</sup> The term, however, continued to be one of reproach with some sections of the population; in 1687-8, Henry Beacher, of Lower Norfolk, is reported to have said of one with whom he had quarreled:—"It would be better for that Quaker dog to go stark naked into a red hot oven than to put his foot on my plantation."<sup>2</sup>

One of the most important acts of the unhappy James the Second was to issue a "Declaration for Liberty of Conscience and Indulgence in Religious Matters." The object of this was to assure toleration for the English Roman Catholics, but as its terms were general, it also afforded the same great privilege to every body of persons who had seceded from the English Established Church. In 1687, Howard having received instructions from the Privy Council to proclaim the Declaration in Virginia,<sup>3</sup> the colonial Council ordered it to be done in every county with the loud beating of drums, the firing of cannons, and every other manifestation of popular joy.<sup>4</sup> Under this Declaration, the Quakers obtained ample protection; and the quickness with which the Revolution of 1688 followed assured its continuation. Whatever annoyance they suffered thereafter was precipitated only by a refusal to pay the parish tithes imposed upon every citizen for

<sup>1</sup> York County Records, vol. 1684-7, p. 114, Va. St. Libr.

<sup>2</sup> Lower Norfolk County Records, vol. 1686-95, p. 57<sup>2</sup>.

<sup>3</sup> Colonial Entry Book, 1685-90, p. 122.

<sup>4</sup> York County Records, vol. 1687-91, pp. 77-9, Va. St. Libr.  
The same order was recorded in Henrico county.

the support of the Established Church. They now, for the first time, became a religious body acknowledged by all to have the right to hold their own religious services openly and unmolested, provided that they had conformed to the requirements of the Act of Parliament passed in 1688 and known as the Act of Toleration.<sup>1</sup> Quakers were now for the first time also permitted to devise ground as sites for meeting houses; for instance, in 1688, George Brickhouse, of Northampton, left to that sect an acre of land surrounding the meeting house already erected at Nassawaddox; and a few years later, Mrs. Judith Patrick bequeathed thirty shillings, perhaps for the repair of the same structure.<sup>2</sup> John Pleasants, in 1690, devised a "small parcell of land" situated in Henrico county as the site for a meeting house and a graveyard. There seems to have been already a meeting house standing on this land, erected quite probably at Pleasants's expense; and he now granted a fee simple title to the tract, together with the building.<sup>3</sup>

Aggressive and even opprobrious language on a Quaker's part was no longer considered to be sufficient ground for issuing a summons against him to appear before the General Court at Jamestown to stand his trial for the supposed outrage; in 1688, Edward Thomas, of York, one of the most zealous members of that

<sup>1</sup> So stated in the Proclamation recorded in 1690 in Henrico County Minute Book, vol. 1682-1701, p. 287, Va. St. Libr. The Act referred to in this Proclamation was entitled: "An Act for exempting their Majesties' Protestant Subjects dissenting from the Church of England from penalty of certain Lawes"; see Minutes of Council, March 7, 1690, B. T. Va. 1690, No. 14.

<sup>2</sup> Northampton County Records, vol. 1683-89, p. 400; vol. 1689-98, p. 435.

<sup>3</sup> Henrico County Records, vol. 1688-97, p. 154, Va. St. Libr.

religious body, denounced Rev. James Slater for speaking, in the course of his ministerial functions, what Thomas represented to be "blasphemous words." Slater contented himself with a civil suit to correct the injury which he alleged had been done him in his parochial charge. The jury entered a verdict for fifty pounds sterling in his favor; and in addition to having to pay this large amount, Thomas was condemned to ask Slater's pardon on two successive Sundays in the church of Bruton Parish, in the face of the congregation; and also in the justices' presence at the next session of the county court. Should he, however, fail to conform to this part of the sentence, the penalty was to be simply a fine, in deference presumably to Thomas's personal standing in the community.<sup>1</sup>

Not unnaturally, when the peculiar principles of their sect brought the Quakers to the point of denying their liability for the performance of certain civil duties, which were incumbent on all citizens independent of creeds, they continued to suffer what they very unreasonably looked upon as a form of persecution. It is probable that they made no effort to escape from the payment of their share of the parish assessment for the support of the Established Church, although, no doubt, they resented such a call on their pecuniary resources. Opposition to war in all its branches was one of their fundamental doctrines. Evidence exists that some were not content to evade militia service simply by the payment of a specified amount; a Quaker summoned in 1691 to attend the muster in Henrico county positively refused to submit to the penalty of the fine imposed on him when he asserted that his conscience forbade him to bear arms. The sheriff

<sup>1</sup> York County Records, vol. 1687-91, p. 232, Va. St. Libr.

promptly levying on his feather bed, rug, and blanket, the delinquent appealed to the General Court; but that body decided that he could only recover his property by paying the fine, or performing the military service required of him.<sup>1</sup> After the passage of the Toleration Act, no objection seems to have been offered when a Quaker declared before the justices his unwillingness to take an oath; he was permitted to affirm; and his testimony was then considered to be entirely valid.<sup>2</sup>

Although the position of the Quakers as a distinct sect entitled to hold religious meetings, to possess church property, and to adopt all necessary regulations for their own church government, was now secure, nevertheless, they had not yet succeeded in freeing themselves entirely from the evil consequences of the popular suspicions to which they had been exposed so long. This fact is brought out clearly by a proclamation issued by Nicholson and the Council in 1691. It was reported in Virginia that the Quakers of Pennsylvania had declared that, should the French and Indians come down upon their settlements armed with rifles, tomahawks, and torches, they would offer no resistance

<sup>1</sup> Henrico County Minute Book, 1682-1701, p. 305, Va. St. Libr. After the passage of the Toleration Act, Quakers were not mulcted for failing to attend the services in the parish church; *Va. Maga. of Hist. and Biog.*, vol. vii., p. 168. The fact that a person was "of another opinion," however, does not seem to have always exempted a delinquent; in 1691, a man was compelled to pay a fine in Lower Norfolk County although he had offered this as an excuse for his absence, probably because not believed; see Lower Norfolk County Records, Orders March 17, 1691. In this year Lower Norfolk county was divided into Norfolk and Princess Anne counties.

<sup>2</sup> See case of Thomas Browne and his wife, Northampton County Records, vol. 1689, p. 88.

to the incursion. On hearing of this remarkable speech, the authorities at Jamestown asserted that such supineness on the part of their northern neighbors would enable the enemy, not only to obtain in Pennsylvania all the provisions they would need in the proposed campaign, but also to find a safe place of retreat there after they had spread ruin and havoc through Maryland and Virginia. Recently (so the Governor and Council stated), there had been numerous assemblages of the Quakers in the latter Colony, in holding which they had failed to inform the local authorities of their action, or to fulfil the other directions of the Toleration Act. By means of such meetings, the French and Indians, should they once take possession of Pennsylvania, would have the amplest opportunity of learning about the condition of Virginia, and thus of carrying out their projected attack in the manner exactly adapted to assure its success. The Governor and Council, greatly alarmed by this anticipated concert between the Quaker inhabitants of the North and South, issued a proclamation warning those of Virginia to refrain from coming together in a general assembly unless they had complied with every requirement of Parliament; and above all, to send word to the nearest magistrate at once, should an emissary of Pennsylvania appear amongst them with a message from that Government. This magistrate was commanded to summon the stranger to his court immediately upon receiving the notification of his presence, in order to subject him to a strict examination as to the place from which he came, the object of his mission, and his point of destination; and should the replies be such as to confirm the magistrate's suspicions, then they were to be taken down in

writing, and in that form transmitted to the authorities at Jamestown.<sup>1</sup>

As late as 1699, the suspicions aroused by the Quakers were far from being allayed. In the course of that year, a complaint was made to the Governor and Council of what was described as the "evil and seditious practices" of this religious body; and so just was it thought to be that Commissary Blair was ordered to devise a plan by which these "practices" might be prevented in the future. It was perhaps at Blair's suggestion that every county was enjoined to return to the Secretary's office a full and exact account as to whether there were held within its boundaries any public or private religious meetings other than those of the Church of England, and if so, where they took place, by whom they were licensed, and how many and what persons attended them; but above all, a strict report was to be made as to whether any strangers had appeared, either as preachers occupying the dissenting pulpits, or as men professing to be interested in the success of some special religious mission.<sup>2</sup> As we have seen, the Act of Toleration required that every Protestant sect which had seceded from the Church of England should regularly present to the authorities a statement as to the places where their religious services were held. It was in conformity with the provisions of this law that John Pleasants, for instance, offered, in 1696, for record a paper showing that the Quakers of Henrico county were, during that year, in the habit of assembling in three different houses for religious wor-

<sup>1</sup> Henrico County Records, vol. 1688-97, pp. 192-3, Va. St. Libr. The same proclamation is also recorded in York County Records, vol. 1690-94, p. 27, Va. St. Libr.

<sup>2</sup> May 30, June 21, 1699, Minutes of Council, B. T. Va., vol. liii.



ship, namely, the public meeting house, the residence of Mary Maddox, and also the residence of himself.<sup>1</sup> In ordering the counties to make a general report as to the dissenters among the population, the Governor and Council were probably influenced by the feeling, which still lingered, that disloyalty to the Established Church, whether tolerated by the authorities or not, was a vague form of disloyalty to every branch of the established order; and that if a spirit of revolt or treason prevailed among any section of the inhabitants of the Colony, it should be looked for in that section which rejected the doctrines and discipline of the Church of England.

The Quakers of Virginia were to illustrate a truth so often illustrated in the same manner in the history of religious bodies:—they were to find that their sect derived more nourishment from persecution than it did from toleration; and that as soon as they were at liberty to make converts without having an organized and legalized opposition to overcome, their power to win over new schismatics steadily declined. At the end of the century, after ten years of freedom of worship and propagation, the number of their congregations had shrunk to three or four.<sup>2</sup> The persecution of the Quakers residing in the Colony had been only sharp enough to stimulate their numerical growth; had it been very harsh, they would probably have found no foothold in Virginia; and had it been very mild, their creed perhaps would not have proved so seductive to so great a company of persons. Neither harsh nor mild,

<sup>1</sup> Henrico County Records, vol. 1688-97, p. 353, Va. St. Libr.

<sup>2</sup> Present State of Va., 1697-8, Section xi. The expression is "three or four meetings of Quakers," by which congregations are evidently meant.

but only moderately severe, such persecution as there was tended to maintain the public interest in the new sect, directed continued attention to its doctrines, and made more conspicuous what was really excellent in its religious teachings. Apparently their keenest enemy, Sir William Berkeley was in fact the most useful friend of the Quakers; it was during his administration, and the administration of his successors who entertained the same hatred of all forms of heresy, that they flourished most; their prosperity declined so soon as the Governor was deprived of all real power to interfere with their meetings or oppose their principles. They played a prominent part in the history of the Colony during those decades of the century when strong efforts were made to repress them; they began to play a more and more obscure part as those efforts steadily relaxed in intensity.

## CHAPTER XXIII

### Dissent: The Puritans

**I**T was not until 1662 that the term "dissenter" became strictly applicable to Puritans, for it was not until this year that the great English Act of Uniformity, which was so radical and far reaching in its operation, was passed. This Act was the final upshot of the uncompromising influences separating the Puritan and the Churchman during the civil wars. There were numerous Puritan clergymen in the early history of the Church of England, and it was to this section that several of the most saintly divines who went out to Virginia, during the first years of the Colony, belonged.<sup>1</sup> Such were George Keith and Alexander Whitaker. It was Whitaker who expressed surprise that "so few of our English ministers that were so hot against the surplice and subscription" emigrated to Virginia, "where neither is spoken of."<sup>2</sup> That those

<sup>1</sup> Purchas, Book ix., ch. xi.

<sup>2</sup> The early tone of the Church of England was distinctly Calvinistic, and it was not until 1630 that a reaction set in. This was first observed in the English Universities, and as the leading exponents of the movement were earnest advocates of the extreme view of the Divine Right of the King, they received the recognition of the crown by promotion to bishoprics and livings. The Act of Uniformity, adopted in 1662, completed the elimination of Puritan influence from the Church of England. All ministers were, by this law, to be expelled from their benefices should they decline to accept the whole of the Book of Common Prayer.

persons who administered the Colony's affairs in the time of the Company entertained no strong prejudice against the Puritans even when their principles were pushed to the extreme of separatism, is shown by the fact that the Pilgrim Fathers received permission to make a settlement within the boundaries of Virginia. As we have seen, however, the General Assembly began as early as 1623-4 to enforce a strict conformity with the canons of the Church of England both in "substance and circumstance"; the same measure was re-enacted in 1631; and from this time, with the exception of the interval of the Protectorate, down to the passage of the Act of Toleration, the Puritans remained as much under a ban as the Quakers themselves.

The first large congregation of persons, either Puritans at the time, or to become Puritans later on, to make a settlement in Virginia obtained patents to land situated on the present Burwell's Bay. The leader of this band was Edward Bennett, who was accompanied by his nephews, Robert and Richard; and Rev. William Bennett served as its first minister.<sup>1</sup> The community established by this congregation, known as "Edward Bennett's Plantation," showed, during many years, their sympathy with the Puritan doctrines and form of religious worship. In 1642, the very year in which Sir William Berkeley, an ardent and zealous follower of Laud, became Governor of the Colony, Richard Bennett and others holding to the same beliefs, who resided in Nansemond county,

<sup>1</sup> Abstracts of Proceedings of Va. Co. of London, vol. i., p. 93. Campbell in his *History of Virginia* states that the first Puritans arrived in 1619, and that a larger number would have followed had it not been for a proclamation issued by Bancroft, Archbishop of Canterbury.

sent a messenger to Boston in New England with letters requesting that ministers should be directed to go to Virginia to administer to the spiritual wants of the Puritan non-conformists there.<sup>1</sup> It was evident that the latter did not anticipate that any effort would be made at this time to interfere with their religious services; and that the same view was entertained by their friends in Massachusetts was shown by the readiness of the response in dispatching to Virginia William Thompson, John Knowles, and Thomas James, three Puritan clergymen of distinction. They carried letters of introduction to Governor Berkeley from Governor Winthrop.<sup>2</sup> Berkeley, however, was as bitterly hostile to the Puritans as to the Quakers, and as he was choleric and outspoken, he very probably gave these clergymen a very ungracious reception.

It was under his influence that, in 1643, an Act was passed which declared that, in order to preserve the Established Church's unity and purity of doctrine, every minister whatever residing in Virginia should conform to all of its canons. If any one refused to do so, then he was not to be suffered either to teach or to preach, whether in public or in private; and if he continued obstinate, he was to be compelled to leave the Colony. This statute, so unmistakable in its meaning, was Berkeley's formal reply to Governor Winthrop's letters handed to him by the three Puritan divines. Knowles and James soon became discouraged and returned to the more congenial atmosphere of New England; Thompson, who was stouter of heart, if not more zealous, lingered, and it seems, by his earnest and

<sup>1</sup> *Va. Maga. of Hist. and Biog.*, vol. iii., p. 54.

<sup>2</sup> Winthrop's *New England*; see *William and Mary College Quart.*, vol. xii., p. 56.

resolute spirit in defying all obstacles in his way, made numerous converts, including, among others, a son of Daniel Gookin. Cotton Mather, probably exaggerating the success won by Thompson in Virginia in the teeth of the hostile authorities, declared, in the language of poetical enthusiasm:—"A constellation of great converts there shone around him, and his Heavenly glory were." It shows the ease with which inferences can be drawn from a terrible catastrophe to support either side of a religious controversy that the massacre of the whites by the Indians in 1644 was proclaimed far and wide by the Puritans as a judgment from God upon the persecution they had suffered, and by Churchmen as an evidence of the Deity's condemnation of their own sin in granting a refuge to the Puritans in Virginia.

At least one clergyman of the Established Church seems to have been deeply affected by the awful significance which the non-conformists had attributed to the massacre; this was Thomas Harrison, who at one time had acted as Berkeley's chaplain<sup>1</sup>; and there appears a certain poetical retribution in the fact that one so close to this redoubtable champion of Laud's doctrines should have become a convert under the influence of an argument which must have seemed especially outrageous to all good churchmen. The impetuous wrath of the hot-headed Governor when his spiritual adviser turned coat must have been even greater than when, at a later period, he confronted the youthful Bacon at

<sup>1</sup> See Fiske's *Old Virginia and her Neighbors*, where this fact is mentioned. In 1640, as already stated, Harrison was elected to a living in Lower Norfolk county, which he seems to have filled until 1648. His chaplaincy must have been coincident with the occupation of this pulpit, see Tyler's *Cradle of the Republic*, p. 139.

the door of the State-House. Harrison, as we have already mentioned, was in 1648, the minister occupying the pulpit in Elizabeth River parish, but was compelled to abandon that living because he refused to read the Book of Common Prayer as a part of the services, or to administer the sacrament of baptism.<sup>1</sup> Either he or others had preached with such extraordinary energy and zeal in Nansemond county that he was able to announce by letter to Governor Winthrop that he had made seventy-four converts; that nineteen persons "stood propounded"; and that numerous others were showing a favourable disposition.<sup>2</sup> In the end, he seems to have been required to leave Virginia not later than the date on which should sail the third ship departing after he was informed of the order. On his arrival in New England, he reported that he had left in the Colony a congregation of Puritans numbering at least one hundred and eighteen persons. He consulted with the magistrates and elders as to what course he should pursue;—whether he should remain in Massachusetts or return to Virginia. They declared that there was excellent ground for expecting a "far more plentiful harvest" than had yet been reaped from the fact that many members of the Council were leaning toward Puritanism, and that at least one thousand persons had been converted to its doctrines; it would, therefore, in their opinion, show great haste should the Puritan

<sup>1</sup> An Act passed in 1647 declared that no minister who had refused to read the Book of Common Prayer was entitled to the payment of tithes by his parishioners; see Hening's *Statutes*, vol. i., p. 341.

<sup>2</sup> Mass. Hist. Coll. Fourth Series, pp. 434-5. This letter was dated 1647. It is possible that Harrison occupied two pulpits at the same time, — one at Elizabeth River, and the other in the adjoining county of Nansemond. All the Colonial records of Nansemond have perished.

ministers abandon the field before the terms on which they could stay there became absolutely intolerable.<sup>1</sup>

Harrison's banishment naturally aroused opposition among persons of the same tenets. The Puritans were now supreme in England, and this fact induced some of his followers to send a petition to the Council of State, in which their former pastor was described as an able man of an unblemished life, who had excited the hostility of the Virginian authorities by his refusal to read in church the Book of Common Prayer. As Parliament itself had now prohibited the use of that book, it was only to be expected that this body would command the Governor of the Colony to allow Harrison to return to his ministry.<sup>2</sup> His zeal, however, does not appear to have carried him so far, for at no very distant date, he is found serving as Henry Cromwell's chaplain, a proof of the radical change which his religious opinions had undergone since he had filled the same office under Sir William Berkeley.

Harrison was followed in the Elizabeth River parish by Rev. Wm. Durand, who appears to have entertained the same religious views<sup>3</sup>; and in this, he was supported by some of the first men in his congregation, as well as by a large number of the plainer members; but this did not save him from being apprehended at the suit of the King, and being compelled, like Harrison, to vacate his pulpit. The influence of their Puritan doctrines remained, for, in 1649, Edward Lloyd and Thomas

<sup>1</sup> Winthrop's Journal, p. 334. This estimate of number was based on conjecture, as the northern Puritans themselves acknowledged. Winthrop's Journal in part will be found printed in *William and Mary College Quarterly*, vol. xiii., p. 54 et. seq.

<sup>2</sup> Interregnum Entry Book, vol. cxv., pp. 482-3.

<sup>3</sup> Durand seems to have followed Harrison to Boston.



Meares, justices of the county court, and six additional citizens of about equal prominence were indicted as "seditious sectaries" because they had refused to attend religious services in the parish church, or to hear read the Book of Common Prayer; and for this double offence, they were required to give bond to appear before the Governor and Council sitting as an ecclesiastical court at Jamestown.<sup>1</sup>

During the existence of the Protectorate, the Puritans had no ground for complaint; their party was now supreme; and by the irony of circumstances, they, in their turn, were in a position to harry those who had striven so persistently to curb their freedom of religious opinion and worship. Perhaps, they would have done this had not their number, after all, been too small to make persecution effective. By the eleventh article of the terms of surrender agreed upon in 1651, the Book of Common Prayer (to which, as we have seen, the Puritans specially objected) was to be allowed to continue in use for the ensuing year provided that the prayers for the King and royal government were omitted; and the ministers then in possession of livings in the Colony were not, during the same period, to be interfered with either as respecting the retention of their pulpits, or the payment of their accustomed dues.<sup>2</sup> If at this time a clergyman of Puritan leanings was to

<sup>1</sup> Lower Norfolk County Antiquary, vol. ii., pp. 14, 83; see also Lower Norfolk County Records, Orders, Aug. 15, Oct. 1, 1649.

<sup>2</sup> Randolph MS. vol. iii., p. 243. This condition prevailed in England also. During the Protectorate, the church buildings were considered to be the property of the parishes; and according to the wishes of the majority of the worshippers, the pulpit of each benefice could be filled by a clergyman of the Presbyterian, Independent, or Church of England faith. This system prevailed from 1654 to 1660.

be found among the Virginian divines, this arrangement protected him as fully as it did one conducting religious services in strict conformity with the Anglican orders and constitutions. But it was only a breathing spell which the Puritan minister enjoyed while the Protectorate lasted; he had been exposed to serious persecution, as we have seen, previous to the establishment of the Puritan Supremacy in England; as soon as that supremacy was overthrown by the restoration of Charles the Second, and a rigid Act of Uniformity passed by Parliament, the Puritans residing in Virginia became as distinct a sect of dissenters as the Quakers themselves, and the hand of repression fell upon them not less heavily than it had done before. Berkeley probably detested them more thoroughly than he did the Quakers; but they do not seem to have found the same nourishment in persecution, and either steadily declined in numbers, or were less disposed to cling publicly to their own doctrines.<sup>1</sup> The gap between them and the Established Church was far less wide, and time perhaps had a tendency to bridge it entirely. Whatever Puritans resided in the Colony towards the end of the century obtained by the Act of Toleration the same freedom of religious opinion and worship outside of the Established Church as had been bestowed on all other dissenting sects.

It does not seem strange to find that the Puritans failed to secure much foothold in Virginia during the course of the Seventeenth century. They were always a small and apparently never an influential body. It is quite probable that the only real differences dividing them from the other congregations were wholly religious

<sup>1</sup> For the Puritan emigration to Maryland, see Fiske's *Old Virginia and her Neighbors*.

in character, namely a rejection of the Book of Common Prayer, and of the Sacrament of Baptism. If they introduced into their social life all those sombre and austere habits and customs prevailing in the theocratic communities of New England, there is no proof of the fact. All the influences at play in such a colony as Massachusetts, for instance, tended, as time passed on, to accentuate the harsher features of Puritanism, and not the least powerful of these influences were those springing from the soil and climate. In Virginia, on the other hand, the Puritan found himself in a community where not one person in fifty surrounding him was in sympathy with his religious creed, or his social principles; there he was not sustained by the example or the teachings of all his associates as he would have been had he resided in Boston or Plymouth; but, on the contrary, was far more likely to be pointed at as a target of ridicule, or held up as an object of folly. The general tone of the social life in which he moved prompted him unconsciously to make the most of the comparatively few pleasures offered in those narrow bounds, whether they consisted of a glass of wine, a dance, a game of cards, or a horse-race. The whole tone of that life was generous, liberal, abounding, at the very time that it was marked by reverence for religion and respect for law. Not one Puritan in an hundred perhaps could have preserved the sombre self-denying spirit of his sect in the life of the secluded plantation, which gave an exaggerated importance to the few indulgences in the reach of the inhabitants. Insensibly, the general tendencies of such a religious body planted in Virginia must have been modified by influences like these, so entirely hostile to the extreme severity long distinguishing people of that faith in the northern

communities. It was perhaps due to this modification in their character that the Puritans of Virginia played no great role in the Colony even during the supremacy of their party in England.

## CHAPTER XXIV

### Dissent : Presbyterians and Papists

THE Presbyterian denomination did not appear in Virginia until all forms of religious persecution had come to an end. The founder of it in the Colony was Rev. Francis Mackemie. In 1699, he presented a petition to the Governor, in which he requested that official to issue a proclamation reasserting the right of all, under the statutes of England, to freedom of conscience, and prohibiting anyone from attempting to deprive any religious sect of the privilege granted them to worship after their own manner. Mackemie was called into the Council chamber, where he was informed by Nicholson that, during his administration, the dissenters should enjoy every liberty conferred by law provided that they refrained from disturbing the peace of the government; this, he added, was all the encouragement which they could or should expect; and if anyone undertook to interfere with that liberty, then he was to be prosecuted for such illegal molestation.<sup>1</sup>

The Presbyterians appear to have obtained some foothold in Norfolk county; this is shown by the fact that, in 1692, the justices of the local court authorized them to hold public worship in three places, where meeting houses had either been specially erected or set apart; one of which was situated on the Eastern

<sup>1</sup> Minutes of Council, April 28, 1699, B. T. Va., vol. liii.

Branch, another on the Western, and a third on Tanner's Creek,—a division that must have subserved admirably the convenience of the members.<sup>1</sup> The pastor in charge of these congregations was Rev. Josias Mackie.<sup>2</sup> In the year 1702, two years after the close of the Seventeenth century, there were only four Presbyterian congregations in Virginia; of these, two had their places of worship on the Eastern Shore, and two on the Elizabeth River, in Norfolk county.<sup>3</sup>

The opposition aroused by the course of the Quakers and Puritans, embittered as it generally was, did not, in intensity, approach the hostility felt towards all who acknowledged themselves to be Romanists. Both of the former sects, after the Restoration in England, were looked upon as more or less disloyal to the Government; but the only ground for this passing belief was based on

<sup>1</sup> Norfolk County Records, Orders June 22, 1692.

<sup>2</sup> *Va. Maga. of Hist. and Biog.*, vol. vii., p. 362. The following refers to the oaths taken by Mackie:—

“Whereas in the first year of the Reigne of William and Mary, King and Queene of England, Scotland, &c being the year of Our Lord one thousand six hundred, eighty and nine, the twenty-fourth of May, An Act of Parliament for exempting their Majties' Protestant subjects dissenting from the Church of England from penalties of certain lawes passed the Royal Assent; these are, therefore, to certify that Mr. John Mackie, Minister of the Gospell, hath this day appeared before us, Thomas Butt and James Willson, two of their Majties' Justices for this County, and hath performed the conditions and terms of toleration enjoyned Protestant dissenters by the late Act of Parliament for Indulgence, upon the performance whereof they are to enjoy the liberty therein granted, Viz: hath taken the oaths of the said Act enjoyned, and hath made and subscribed the declaration therein mentioned and within written, and hath also declared his approbation of and subscribed the articles of religion, excepting what are to be excepted, as is required by Act of Parliament, and also written within; Dated under our hands June 22, 1692.

THOMAS BUTT,      WILLIAM WILLSON.”

<sup>3</sup> Campbell's *History of Virginia*, p. 371.

suspicion alone; and so far as action showed, had no substantial footing whatever. The religion of the papist, on the other hand, carried with it necessarily the absolute spiritual supremacy of the Roman See in the hearts of all who professed it. In denying that the King of England was the head of their Church, the dissenters did not attempt to set up another, and that too, a foreign potentate in his stead; this the papist openly did; and in that age, it was not unnaturally regarded as a step towards treason in temporal affairs. The Pope, who was denounced by the great body of the English people as Anti-Christ, was the head of the Roman Catholic Church, and his principal design was supposed to be to overthrow both the spiritual and the civil order in England; a member of that church was, therefore, regarded as scheming, so far as lay in his power, to promote the success of this design, presumably so dear to that head, who claimed his entire allegiance.

As early as 1609, the author of *Nova Britannia* declared that he detested the thought of "one person seasoned with the least taint of that leaven" becoming a settler in Virginia; and the same writer urged that, should such a person be found there, he should be transported home at the first opportunity. There was no hope, he exclaimed, of the colonists prospering with this "viperous brood" in their bosom, "who will eat out and consume the womb of their mother. Papists are ever plotting and conspiring to root you out. Believe them not, howsoever they swear, flatter, and equivocate." <sup>1</sup> It was carefully enjoined in the charter of 1609 that the oath of supremacy, which asserted the spiritual headship of the King of England over all his subjects, should be tendered to every one seeking to land

<sup>1</sup> *Nova Britannia*, 1609, p. 20, Force's *Hist. Tracts*, vol. i.

in Virginia<sup>1</sup>; and should anyone refuse to swear, he should not be suffered to disembark. In October, 1629, when Baltimore and his companions visited the Colony with the view of seating themselves there, they were requested to take this oath, but being open supporters of the Romish doctrines and ceremonies, they declined to do so; and as the authorities, in their turn, refused to omit the oath, Baltimore had no alternative but to depart, a step which was to have momentous and lasting political consequences.<sup>2</sup> In a letter to the Privy Council, the same year, informing that body of their action, with their reasons for it, the Governor and Council declared that, "among the many blessings for which we are bound to bless God . . . there is none whereby we have been made more happy than in the freedom of our religion which we have enjoyed, and that no papists have been suffered to settle their abodes amongst us." They implore the King to confirm this freedom, and beseech the Privy Council to use all their influence with their royal master to have it permanently continued.<sup>3</sup>

The promptness and sternness with which casual expressions attributing Romanist leanings to the King were punished in the Colony as early as 1642 shows that popery was held at this time in such indescribable horror that to impute it to the sovereign was looked upon as a form of treason. In the course of that year, Stephen Reikes said in the hearing of several persons:—"His Majesty was at confession with the Lord of

<sup>1</sup> Brown's *Genesis of the United States*, vol. i., p. 235.

<sup>2</sup> Randolph MS., vol. iii., p. 214. The authorities refused "to decline from the prescribed form so strictly enjoined and so well justified by the pen of our late Sovereign," James the First.

<sup>3</sup> British Colonial Papers, vol. v., No. 40; Robinson Transcripts, p. 48.



Canterbury." He was arrested and tried; and his words having been pronounced to be of a dangerous tendency, he was condemned, not only to pay a fine of fifty pounds sterling (equal to about twelve hundred and fifty dollars in modern values, a very large sum at that time), but also to sit in the pillory, with a placard attached to his breast proclaiming his offence.<sup>1</sup>

An Act of Assembly passed a few years later forbade any office in the Colony to be filled by a popish recusant; and it also directed that every priest of the Romish Church, who should find his way to Virginia, should be sent out within five days after his arrival.<sup>2</sup> How keen and determined was the hostility to all persons of that faith at this time is revealed by the strong effort made to prevent them from exercising the most ordinary fiduciary powers. In 1654, Edwin Conway, of Lancaster county, was by will appointed the overseer of an estate, which also included the guardianship of several children. An order of administration displacing him was granted to John Meredith and Walter Heard apparently on the single ground urged by Meredith that he was a papist. Conway, objecting strenuously to his own removal, protested that no step should be taken until the county court had had an opportunity to pass upon his right.<sup>3</sup> We find the same uncompromising antagonism cropping out at this time even in the usual articles of indenture; in the course of August, 1655, John Dodman, of Westmoreland, by the terms of his contract with Jane Duke, agreed to bring up her

<sup>1</sup> Hawks, quoting Hening's *Statutes*, vol. i., p. 552, states that this event occurred in 1642, at which time Berkeley, a warm admirer of Laud, occupied the office of Governor; see Hawks, p. 50; see also Robinson Transcripts, p. 28.

<sup>2</sup> Hening's *Statutes*, vol. i., p. 268.

<sup>3</sup> Lancaster County Records, Orders March 27, 1654.

son, just apprenticed to him, in the Protestant religion; and in doing this, he was to be careful that the boy should be taught the correct prayers, and also how to read the Bible and other pious books printed in the English language.<sup>1</sup> In 1663, John Montone, a native of France, who followed the calling of a physician in Northumberland county, in his petition asking for naturalization, declared emphatically that he utterly denied and abhorred the "rules and superstitious ceremonies of the Romish Church."<sup>2</sup> Montone belonged to the sect of Huguenots, with whom hatred of that Church was not a historical tradition transmitted from a past generation, but a sentiment created by recent spoliation and persecution.

A man bearing the name of Raymond, who asserted that he was a Romanist priest, was, in 1687, summoned before the justices of Lower Norfolk on the complaint of Hugh Campbell that he had married a couple without any license, or publication of banns. Raymond, however, was able, in defence of his act, to show a certificate from the clerk of Elizabeth City county announcing that the banns had been published there in the manner required by law. The justices, not being satisfied apparently with the fact that the marriage ceremony had been performed by a Romanist priest, demanded security of him to answer by a designated date to the General Court sitting at Jamestown; this security Raymond refused to give, on the ground that the King had lately, by proclamation, bestowed on all his subjects, regardless of sect or creed, entire liberty of conscience; and that under the protection of this new Declaration, the Roman Catholic priest had a

<sup>1</sup> Westmoreland County Records, vol. 1653-64, f. p. 52.

<sup>2</sup> Northumberland County Records, Orders March 8, 1663.

right to celebrate the Mass and the other rites of his Church in any house in the Colony. This, Raymond stated he had done in the homes of Mr. Charles Egerton, Captain Robert Jordan, and Mr. Henry Riddick.<sup>1</sup>

At a session of the Council held in October, 1688, Governor Howard, who was especially remarkable for his subserviency to the King, informed this body that, during his recent visit to the Eastern Shore, Colonel Charles Scarborough had, in his presence, declared that "His Majesty would wear out the Church of England." "How wear out?" asked the Governor. "When there are vacancies," Scarborough replied, "the King supplies the places with men of other persuasions." Howard, in an excess of indignant zeal, not only reproved Scarborough for expressing such a sentiment, but also summarily deprived him of his commission as a justice of the county court. The Council approved the Governor's action on the ground that Scarborough's words tended to disquiet the Government, and were contrary to the spirit of the King's Declaration of Liberty of Conscience; he was summoned to answer for them before the General Court; but appears to have been finally discharged without punishment.<sup>2</sup> Scarborough was not the only person charged with disloyalty because he openly condemned the policy inaugurated by the shortsighted James for the advancement of the welfare of the Roman Catholic Church in his dominions; Edmund Bowman, a merchant of large fortune for that

<sup>1</sup> Lower Norfolk County Records, Orders Nov. 16, 1687. The royal proclamation referred to by Raymond was apparently that of Charles II, which was designed for the protection of the Roman Catholics, but created such opposition that it was soon withdrawn; see Green's *Short History of the English People*.

<sup>2</sup> Colonial Entry Book, 1680-95, p. 302; Palmer's *Calendar of State Papers*, vol. i., p. 21; Hawks, p. 72.

period, was called before the Council on a like accusation of criticising the King's conduct, whilst James Collins was thrown into prison, and heavily ironed for the same offence.<sup>1</sup>

The panic raised in England by the blind course of the infatuated monarch had its reflection in conditions prevailing in the Colony about the same time. In 1688, a report was spread abroad in Stafford county that the papists of Virginia and Maryland were conspiring with the most ferocious of the Indian tribes to butcher all the Protestants; and that ten thousand Senecas and nine thousand Nanticokes had already snatched up their arms and were rushing forward, by forced marches, on the war-path. So terrifying was the impression created by this report that a large number of families residing near the line of frontier fled from their homes without stopping to carry off any of their property, and took refuge in those parts of the Colony where they thought they would find, at least for a time, some safety from danger. Coincident with the news of the papist and Indian incursion, it was whispered abroad that the entire Council, as well as a very large proportion of the county justices, had been converted to Romanism, and were giving open assistance to these sanguinary foes.<sup>2</sup> Under the influence of the violent passions aroused by fear and suspicion, the people seized their guns and formed themselves into armed bands, which were, with great difficulty, prevented from breaking the peace. The chief instigators of this extraordinary disturbance were Rev. John Waugh, Burr Harrison, and John West, who asserted that they had received their first infor-

<sup>1</sup> *Va. Maga. of Hist. and Biog.*, vol. vi., p. 394.

<sup>2</sup> Suspicion was most strongly directed against Isaac Allerton and John Armistead.

mation of the terrible plot from a friendly Indian. They were arrested by order of court and carried on board of the guard-ship *Deptford* for safekeeping.<sup>1</sup>

The report as to the papist and Indian uprising also got abroad in the neighboring county of Rappahannock; here the principal instigators of the commotion soon following were William Gannock, William Heather, Timothy Davis, and George Lambert; who, arming themselves with swords and muskets, marched about beating drums for volunteers, and crying aloud that "there was now no King, no law, no government." Three members of the Council, John Armistead, Ralph and Christopher Wormeley, at least two of whom resided in that part of the Colony, in order to put an end to so dangerous a disturbance, arrested the chief offenders and cast them into jail.<sup>2</sup>

A wave of suspicion beginning in these violent scenes in the Northern Neck seems to have passed to other parts of the Colony, and everywhere the terror of popish conspiracies led to absurd reports. For instance, it was said openly in Accomac that George Nicholas Hack, a leading citizen, supposed to be a papist in his sympathies, had received a bull directly from the Vatican; and one witness went so far as to assert that he had seen this remarkable document with his own eyes; that it was a pardon for sins; and that it ran out to three or four sheets of printed matter.<sup>3</sup> This

<sup>1</sup> Colonial Entry Book, 1680-95, p. 319.

<sup>2</sup> *Ibid.*, i., 80-95, p. 320.

<sup>3</sup> Accomac County Records, vol. 1682-97, p. 172, Orders Nov. 21, 1689.

"Deposition of Richard Bally, that sometime towards ye fall of ye liffe, ye day not well remembered, in ye yeare 1688, Mr. Samuel Palmer and your deponent being att ye deponent. house and discorsing of ye difficulty of ye times, ye sd. Palmer tould ye deponent.

astounding credulity in the popular mind lasted long after all prospect of a Roman Catholic restoration had vanished with the final expulsion of James the Second. In 1694, a witness testified before the Court of Henrico that Edward Hatcher, appearing at his house late at night, had announced that Mrs. Banister had been found hanged to a tree by means of a tenter-hook stuck in her jaw, and that nine other persons had also been found near her dead, each one attached to a separate tree in the same manner. "This is like the papists' way," exclaimed the witness in horror. Hatcher who had either invented the whole story, or was repeating a groundless rumor, declared that it was the deed of the Indians, but he added:—"I believe there were either papists with them, or they were hired by papists."<sup>1</sup>

In 1691, Joseph Bridger, of Isle of Wight, following

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that there was a great man in our county had a Bull from ye Pope already, which news startled ye deponent, and made him desirous to know how 't was. Ye sd. Palmer replied 'it was Capt. Hack.' Ye deponent. asked ye sd. Palmer how he knew it; ye sd. Palmer said he saw it and red part or all of it. Ye deponent. asked ye sd. Palmer what manner it runn. Ye sd. Palmer replied 'A Pardonn for sinns.' Ye deponent. asked ye sd. Palmer whether it was written in hand or in print, and how much there was of it. Ye sd. Palmer answered it was in print, and about three or four sheetes of paper, and further more saith not." Another witness deposed that he heard Palmer say "after he had read it (the bull), Mr. Hack being by said: 'Well Mr. Palmer and how do you like it,' and Mr. Palmer said, 'I cannot tell how I like it for it is the first I ever see of them, nor I don't greatly care whether I ever see another, for I don't understand what belongs to Bulls,' but since I have considered to myself yt it was a Bull or a pardon yt he had from ye Pope, and, therefore, I think he must needs be a papist, or else he would never keep such a thinge in his house." A third witness said that "Mr. Hack had a Bull come in and that it had cost him £5." Capt. Hack was probably amusing himself at the expense of these witnesses.

<sup>1</sup> Henrico County Records, vol. 1688-97, p. 532, Va. St. Libr.

the example set by John Meredith in 1654, petitioned the county court to issue an order that a certain child, at that time in the custody of Peter Blake, of Nansemond, should be delivered into his possession. He based his claim on the fact that, in addition to his obligations as administrator of the estate left by the child's mother, he was under a solemn engagement before God to ensure for the child a Christian education; and that this was impossible so long as he remained under the control of Blake, who was a "professed papist contemner, and slighter of ye public worship of God as is established by ye law of England and Virginia."<sup>1</sup> This petition seems to have met with a favorable response.

A like spirit was shown by the courts in a case occurring in 1699, which also involved the care of a youthful person. In the course of that year, information reached the Governor and Council that William Aylward, of York, and Samuel Hill, John Read, and the elder and also the younger John Lucas, of Warwick, who were known to be men of "popish principles," had entered into a conspiracy to carry a girl named Mary Brown by force out of Virginia into Maryland, there to be married to a Roman Catholic. The plotters were commanded to appear before their respective county courts, where the oath prescribed by Act of Parliament in place of the former oaths of allegiance and supremacy, was to be tendered to them; and should they refuse to take it, this fact was to be reported to the Attorney-General, who was to be required to prosecute them at the earliest opportunity. Hill and Read had obtained their appointment as the girl's guardians by false representations, for, as popish

<sup>1</sup> Palmer's *Calendar of Virginia State Papers*, vol. i., p. 31.

recusants, they were incapable of serving in that capacity under the law.<sup>1</sup>

Among the prominent attorneys belonging to the bar of Stafford county in 1691 were George and Robert Brent; both were Roman Catholics; and the question arose, could a popish recusant legally practise law in Virginia? The case against them seems to have dragged along until 1693, when the two attorneys were again indicted by the grand jury. They sought to postpone the issue as before, but in this were not successful; the justices decided against them; and an appeal was taken to the General Court, with what result is unknown, owing to the destruction of the records. George Brent, in 1690, was acting as the Ranger-General of the Northern Neck by the appointment of the Proprietary, who, it would appear from this fact, did not share the almost universal hatred and distrust of the Roman Catholics prevailing in Virginia at that time.<sup>2</sup>

The animosity towards the papists must have been fanned by the Protestant clergymen if their actions were influenced by the oath they were required to take before they could obtain a license to preach. The oath administered to Rev. Josias Mackie who, as we have seen, had charge of the Presbyterian congregations of Norfolk county in 1692, shows how elaborate its provisions were. He swore, first, that there was no transubstantiation of the elements of bread and wine in the Sacrament of the Lord's Supper; secondly, that the invocation and adoration of the Virgin Mary, or any other saint, and the sacrifice of the Mass as then

<sup>1</sup> Minutes of Council, May 17, 1699, B. T. Va., vol. liii.

<sup>2</sup> Palmer's *Calendar of Va. State Papers*, vol. i., p. 76; *Va. Magazine of Hist. and Biog.*, vol. i., p. 123.



used in the Church of Rome, were superstitious and idolatrous; thirdly, that this declaration was made in the plain sense of the words as understood by English Protestants, without any dispensation granted him for the purpose by the Pope, or any hope of such dispensation; and, finally, that he did not think that he could be acquitted before God or man, or absolved of this declaration, should the Pope or any other person, or power whatsoever, annul the same from the beginning. In addition to this general oath, the Protestant clergyman was also required to swear that he abhorred as most damnable the doctrine that princes excommunicated by the See of Rome, or with its authority, could be deposed, or murdered by their subjects, without the commission of an abominable crime, for which they should suffer the extreme penalty of the law.<sup>1</sup>

In 1681, Culpeper informed the Board of Trade that, at the time he was writing, there was but one papist residing in Virginia.<sup>2</sup> No doubt, this was a gross understatement, as it was only a few years later that a Roman Catholic priest, Father Raymond, was found celebrating the Mass in the homes of several leading citizens of one county alone. The entire body of papists, however, could never have been important either in numbers or influence. The extraordinary distrust with which they were regarded would not have reached the proportions it did had it originated either in a purely historical knowledge of the conflict between Catholics and Protestants, or in any apprehension as

<sup>1</sup> Norfolk County Records, Orders June 22, 1692; Henrico County Records, vol. 1688-97, p. 403, Va. St. Libr.

<sup>2</sup> Colonial Entry Book, vol. cvi., pp. 309-11. Culpeper also stated that, at this time, there were in Virginia a sect of dissenters who called themselves "Sweet Singers."

to the supposed injury this small body unaided could inflict on the people of the Colony. But from the foundation of Maryland, the proximity of that Romanist Province imparted to the papists of Virginia a much more sinister character than would have distinguished them in the popular view had they been looked upon as standing alone. They would have still aroused a bitter prejudice in the popular mind, but it would have been a prejudice not aggravated by fear.

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## CHAPTER XXV

### Atheism and Witchcraft

TO confess that one was devoid of any religious belief was, if possible, deemed to be even more heinous than to acknowledge oneself to be either a Quaker or a Papist. How slight were the grounds on which charges of atheism were brought was illustrated in the case of Wingfield, the first President of the Council and Governor of the Colony:—he was accused of practically denying the existence of God because he had failed to carry a Bible with him to Virginia. Wingfield, knowing how destructive of his reputation such an imputation would be unless refuted, defended himself by saying that, when he left his home in one of the English shires to go up to London, his Bible was sent to that city along with his other books, and there left in the care of a Master Croft, but the trunk containing it was broken open by a thief and rifled, and he presumed that the Bible was one of the things “beasiled,” as it could not be found among his other books on their arrival in Virginia.<sup>1</sup>

<sup>1</sup> *Works of Captain John Smith*, Arber's edition, p. lxxxviii. By an Act of Assembly passed in 1675, with the view of establishing certain military regulations, it was provided that a soldier guilty of blasphemy in camp should be required to run, after the Indian fashion, the gauntlet of one hundred men, and if he persisted in the offense, his tongue was to be pierced with a red hot iron; Colonial Entry Book, vol. lxxxvi., p. 70.

In 1654, Edward Hill, when a candidate for the office of Speaker of the House of Burgesses, was, without ground, charged with being a blasphemer and an atheist, and the accusation seems even to have been investigated by the General Court. But his acquittal did not save him from further imputations on the same score. Hatcher, a delegate in the House over which Hill was presiding at the time, boldly exclaimed during a session of the Burgesses:—"The mouth of this House is a devil." He was compelled to kneel and acknowledge the impropriety of this speech; and his name was afterwards dropped from the roll.<sup>1</sup> In 1683, Thomas Newhouse, of Lower Norfolk, was accused of having asserted before an assembly of people that "a great part of the Bible was false." He was arrested, tried by the justices of the county, and at once sent on to the General Court sitting at Jamestown.<sup>2</sup> A large number of persons were, on one occasion, indicted in Accomac on the ground that, by their participation in a mock marriage, they had made a scoff of the same holy book.<sup>3</sup>

During the last year of the century, it was proclaimed in an Act of Assembly that a denial of the existence of the Deity or the Trinity, or an assertion that there were more Gods than one, or that the Christian religion was false, or that the Scriptures were of human and not of divine origin, should subject the person guilty of such an utterance, for the first offence, to incapacity to hold public offices; and for the second, in addition to this penalty, to disability to sue in a court of law, dis-

<sup>1</sup> Acts of Assembly, Nov. 20, 1654, Randolph MS., vol. iii., p. 236; Neill's *Va. Carolorum*, p. 237.

<sup>2</sup> Lower Norfolk County Records, Orders Aug. 15, 1683.

<sup>3</sup> Accomac County Records, vol. 1690-97, p. 37.

qualification to serve as a guardian or executor, and incapacity to accept any gift or legacy; and as a further punishment, he was to suffer imprisonment during a period of three years.<sup>1</sup>

The excess of incredulity as reflected in atheism was probably far less frequently observed in the Colony than the excess of credulity as reflected in the belief in witchcraft. There was perhaps not a single community in the civilized world of those times in which this form of superstition did not exist; in some, as in Massachusetts, for instance, the belief in witchcraft was carried so far that it led, as at Salem, to the judicial murder of numerous unhappy persons; the annals of Virginia bear no such stain, but this uncouth superstition, which had its birth in ignorance and malice, prevailed certainly among the lower section of her people throughout the Seventeenth century. Fortunately, it resulted in the infliction of no severer punishment than a flogging or a ducking; and even this punishment was imposed in only two cases whose record has survived, one of which occurred early in the following century.

Rev. Alexander Whitaker, one of the most accomplished men of that age, writing to Rev. William Crashaw in England, touched at some length on the "anticks" of the Indians. "All these things," he concluded with evident awe, "make me think that there be great witches among them, and that they are very familiar with the Devill."<sup>2</sup> As soon as the Colony's population began to increase very much, the "great witches" were not supposed to be confined entirely to the ranks of the savages; they had now appeared among the settlers

<sup>1</sup> Hening's *Statutes*, vol. iii., p. 168.

<sup>2</sup> Brown's *Genesis of the United States*, vol. i., p. 499.

themselves; but unlucky was the man or woman who, in a moment of passion, attributing to some neighbor the evil powers of a witch, was unable afterwards to prove the charge; the accusation was too serious in its consequences, should the person to whom such powers were imputed, be innocent, to be passed over without an inquiry. In 1641, Jane Rookins, in a quarrel with George Busher's wife, as the consummation of abuse denounced her as a witch. Mrs. Busher, resenting the charge, in her great fear lest it should bring down on her head a wave of popular rage, made a complaint to court of the wrong done her by the application to her of such a frightful word. Mrs. Rookins' professed to have no recollection of having used it, but declared her readiness, should she have done so, to express her hearty penitence. The apology was accepted as sufficient, but the justices ordered her husband to reimburse George Busher for the expense he had been put to in prosecuting the case.<sup>1</sup>

In the course of 1655, the justices of Lower Norfolk stated from the bench that the reputation of several women residing in the county had been recently blackened and their lives jeoparded, by the "dangerous and scandalous speeches" of persons publicly accusing them of witchcraft. So great an outrage did the court consider this to be, that they entered an order that, should anyone bring a charge of this kind without being able to support it by his own oath, or the oaths of other witnesses, he was to forfeit one thousand pounds of tobacco.<sup>2</sup> During the same year, Rev. David Lindsay, of Northumberland, a clergyman who

<sup>1</sup> General Court Orders, Robinson Transcripts, p. 28.

<sup>2</sup> Lower Norfolk County Records, Orders May 23, 1655; Lower Norfolk County Antiquary, vol. iii., p. 152.

had emigrated from Scotland, a land where witchcraft flourished, accused William Harding of that county of sorcery; the case was submitted to a jury, who found him guilty in part of the crime laid at his door; the court promptly sentenced him to receive ten stripes on his bare shoulders, and then to be banished permanently from the county. Two months, however, were allowed him within which to take his leave, for it was evidently regarded as only right that he should be permitted to settle his affairs before his departure.<sup>1</sup> Three years later, Rev. Francis Doughty, emulating the zeal of Mr. Lindsay, had Barbara Winbrow dragged before the justices of Northampton, on the ground that she was notoriously bad in her life and conversation, and generally supposed to be "guilty of witchery." She had already been arraigned for sorcery before the General Court, but had secured an acquittal.<sup>2</sup>

The only case involving the infliction of the death penalty on anyone accused of this offence coming before the courts of Virginia during the Seventeenth century related to an incident occurring, in 1659, at sea. In the course of a voyage from England, Captain Bennett, an Englishman engaged in the trade with the Colony, hung at the yard's arm, quite probably at the clamorous demand of his superstitious passengers during the progress of a violent storm, an old woman

<sup>1</sup> Northumberland County Records, Orders Nov. 20, 1655. There were other charges besides witchcraft brought against Harding on this occasion, and it is possible that the conviction was for these other offenses, and not for sorcery. The expression is: "They (the Jury) found part of the articles proved by several depositions." Harding, like Barbara Winbrow, may have been notoriously "bad in his life and conversation," and his banishment may have been due to this fact alone.

<sup>2</sup> Northampton County Records, vol. 1657-64, p. 18; General Court Orders, Dec. 1, 1657, Robinson Transcripts, p. 243<sup>2</sup>.

named Katharine Grady suspected of witchcraft; but when information as to this summary act was submitted to the General Court at Jamestown, he was immediately summoned before them to answer for it, a proof that they did not consider that a charge of sorcery against anyone would justify such an instant and such an extreme penalty.<sup>1</sup>

A law passed in 1655 would seem to show a determination on the General Assembly's part to discourage as far as possible the endless turmoil caused by charges and countercharges of witchcraft; they referred to such accusations as designed to bring "slander and scandall" upon the person held up as guilty; and they, therefore, provided a severe punishment for anyone who began them. From this it would be presumed that they themselves had very little faith in such imputations. That this statute was enforced is proven by the case of Anne Godby, of Lower Norfolk; in a moment of great passion, she denounced the wife of a prominent citizen as a witch, and for this her husband was compelled to pay, not only a fine of three hundred pounds of tobacco, the penalty for her contempt of the statute, but also all the costs of the suit, including the fees and expenses of the numerous witnesses.<sup>2</sup>

In 1665, Alice Stephens was brought before the General Court on a charge of witchcraft<sup>3</sup>; and in the course of the same year, a judgment was obtained in the same court against a woman who had made a similar charge against one of her neighbors.<sup>4</sup>

<sup>1</sup> Robinson Transcripts, p. 243<sup>1</sup>.

<sup>2</sup> Lower Norfolk County Records, vol. 1656-66, p. 267. The statute is referred to in this court entry.

<sup>3</sup> Robinson Transcripts, p. 250.

<sup>4</sup> *Ibid.*, p. 256.



A difference having arisen in 1671, between Mrs. Neal and Edward Cole, residents of Northumberland county, Mrs. Neal, during the quarrel, gave utterance to a "kind of prayer" that "neither he nor any of his family might ever prosper." Shortly after this vindictive expression had passed her lips, Cole declared that all the people connected with his plantation fell ill, and that Mrs. Cole also was taken down with sickness, and had not yet been restored to health. All this, so he informed Captain Edward Le Breton, was due entirely to the influence of Mrs. Neal's curse. On another occasion, when his wife was confined to her bed, he had sent word to Mrs. Neal to come and visit her. At this time, it would seem, he was not aware of her evil powers, but fortunately, said he, in entering the house, she passed under a horseshoe nailed over the door, and this fact alone had led her, when she reached Mrs. Cole's side, to pray heartily for her recovery. That this was no groundless assertion was proven by her becoming malignant again as soon as removed from the benign influence of the horseshoe.<sup>1</sup>

About 1679, Alice Cartwright was accused in the court of Lower Norfolk of having cast a spell over John Salmon's child. A jury of women was at once impanelled, but as they reported that they had found no suspicious marks on her body to show that she was in commerce with witches, she was discharged as innocent.<sup>2</sup>

The delusion prevailed in those times that if the person who had fallen under the evil ban of sorcery was a heathen, Christian baptism would break the charm

<sup>1</sup> Northumberland County Order Book, 1666-72, folio p. 104.

<sup>2</sup> Lower Norfolk County Records, Orders Jan'y 16, 1678-9; Lower Norfolk County Antiquary, vol. i., p. 56.

and set him free. Not long before the Insurrection of 1676 began, under the leadership of the younger Bacon, Colonel Mason captured the youthful son of the King of the Doegs and carried him home. After arriving there, it is alleged the boy lay in bed for a period of ten days, his eyes staring and his mouth agape, but with no sign that he was breathing, although his body remained warm. Captain Brent, a Roman Catholic in faith, visiting him, perhaps out of curiosity, pronounced him, after examination, to be bewitched, and earnestly recommended that he should be baptized, a remedy which, he said, he had often heard would at once counteract the evil consequences of sorcery. His advice was promptly followed, and the chronicler of the incident sagely declares that the boy soon recovered.<sup>1</sup>

In the commissions which the justices of the county courts received on their appointment to office in 1691, they were strictly enjoined to inquire, not only as to all felonies, trespasses, and forestallings occurring, but also as to all witchcrafts,—a crime against the safety of individuals, and the peace of the community, as serious in its nature (at least in the eyes of the Governor drawing up these commissions), as any coming within the Grand Jury's jurisdiction.<sup>2</sup> Nevertheless, after this time, whilst the accusations of witchcraft brought into court for investigation were numerous enough, there seems to have been little disposition on the part of justices or juries to affirm them by a favorable judgment or verdict. A charge of sorcery was as

<sup>1</sup> T. M.'s *Account of Bacon's Rebellion*, p. 9, Force's *Hist. Tracts*, vol. i.

<sup>2</sup> See Nicholson's *Commission to the Northampton County Justices in 1691*, vol. 1689-98, p. 98. See *Commission of Essex County Justices in 1692*, vol., 1692-5 pp. 1, 2, Va. St. Libr.

easily provable in one case as in another, as in no case was there any ground at all for it to rest on; and that these officers of the law should have allowed such charges to be the subject of civil suit more often than of criminal prosecution, shows that they were beginning to disbelieve in them thoroughly.

This fact is illustrated in numerous cases. In 1694, William Eale accused Phyllis Money of having cast a spell over Henry Dunkin's horse and by making him start off suddenly lacerate his owner's leg; and he further declared that she had taught her daughter, who was Dunkin's wife, to be a witch, and that Mrs. Dunkin had in turn taught her husband to be a wizard. Not content with speaking these terrible words in Dunkin's house, Eale had repeated them again and again in other places. Phyllis protested that she had never been guilty of witchcraft, or of any "wicked and base acts" of that nature, but that in consequence of Eale's groundless charges, her neighbors had refused to "keep company" with her and her husband, and that they had been much injured in their credit and good name; and she even went so far as to assert that their lives had been in imminent danger. Had there been a strong belief in witchcraft among the justices of the county court, Phyllis and her husband would have been arrested on the original charge and prosecuted; instead, they were allowed to bring a civil suit, which amounted to no more than an ordinary action of defamation; and in the end failed to secure any damages.<sup>1</sup>

In the following year, Henry Dunkin was summoned to court in a civil suit for scandalous reflections on the reputation of John Dunkin and his wife, the most reprehensible of which were that Elizabeth Dunkin had

<sup>1</sup> Westmoreland County Records, Orders Nov. 1, 1694.

boasted to him that she was a sorceress; that she had bewitched his cow, and was herself regularly sucked by the Devil. This was a charge which, could it be proven, would have rendered her, by the provisions of the English law, liable to be burnt at the stake, an accursed and shameful death; such "damnable and wicked words" falsely attributed to her, Elizabeth alleged, were deliberately designed to destroy the good names of herself and her husband, to ruin them in their estates and fortunes, and to bring lasting discredit on their posterity. A short time after Henry Dunkin reported these words to have been uttered, he went to John Dunkin's house, and there heaped "atrocious and scurrilous names" upon Elizabeth, denounced her as a witch and her children as witches' imps, and ended by defying all her works of sorcery. The case was submitted to a jury, with a claim on John and Elizabeth Dunkin's part to forty thousand pounds of tobacco in damages; but that body returned a verdict allowing them only forty pounds of that commodity. It would appear from this that the members of this jury at least looked upon a charge of witchcraft as calculated to make so little public impression that it could not be regarded as a very serious form of defamation.<sup>1</sup>

A suit was brought by William Morris, of King and Queen county, in 1695, on the ground that his wife, Eleanor, had been accused of sorcery. Eleanor, in her testimony in court, stated that she had resided in Virginia thirty years, and that in the whole of that time was "never guilty of any conjuration, witchcraft, enchantment, or charm," but, on the contrary, her skirts had remained clear of all such offences, or even the suspicion of them. Notwithstanding this fact, Anne

<sup>1</sup> Westmoreland County Records, Orders Aug. 28, 1695.

Ball had gone about declaring in a very loud voice that Eleanor had been and still was a witch, and had ridden her during several days and nights until she was wearied nearly to death. The jury, instead of turning a credulous ear to such a charge, promptly acquitted Eleanor, and found Mrs. Ball guilty of defamation. Mrs. Ball seems to have been disposed to bring numerous accusations of the same character, for about the same time she charged Nell Cane with riding her twice.<sup>1</sup>

Princess Anne county, which was to become early in the Eighteenth century the scene of the most memorable trial for sorcery recorded in the colonial history of Virginia, seems to have been frequently agitated, towards the end of the Seventeenth century, by the machinations of supposed witches. The most conspicuous of these was Grace Sherwood, who was to win such lasting fame as an enchantress. She appeared in this character as early as 1698, in which year, she was accused by John Gisburne of casting spells. She evidently thought that the reputation of possessing such evil powers was not favorable to her personal safety, for she joined with her husband in suing Gisburne for defamation. As the jury decided against her, it would be inferred that, like the jury in the Dunkins' case, they did not deem a charge of witchcraft, from the very nature of it, entitled to any consideration. Anthony Barnes also brought a similar accusation against Grace:—he declared that she had ridden his wife one night, and then, in the shape of a black cat had slipped through the keyhole, or a crack in the door. Barnes being sued for slander, the jury again decided against Grace, perhaps because they looked upon the charges

<sup>1</sup> Essex County Records, Orders June 11, 1695.

as too absurd to carry weight in the minds of sensible people.<sup>1</sup> Some years afterwards, the same woman was sentenced to be ducked, ostensibly to test whether she was really a witch, but quite probably to punish her slyly for having become a serious nuisance to the public by the strife which she was so successful in stirring up.

The year in which Grace Sherwood was accused of witchcraft by Anthony Barnes, Anne Byrd, of the same county, was charged by Charles Kinsey with riding him from his house as far as Elizabeth Russell's; this led to a report that she was a sorceress; and so much disturbed was she and her husband by this reputation, that they brought suit against Kinsey and placed the damages at one hundred pounds sterling. The defendant admitted that he had used such words, but declared that Anne had appeared to him merely in a dream, or if he were really awake at the time, that it was a pure illusion. The jury after this explanation found in his favor, but they also found in favor of John Pitts (who had accused Anne of riding him along the sea-shore), although Pitts, instead of seeking to back out like Kinsey, persisted in saying that "to his thought, apprehension, and best knowledge, she did serve him so." In this case, as in the others already mentioned, the jury plainly considered the charge to be too improbable in itself to be received with credulity, and, therefore, the reputation of Anne Byrd could not have been really injured.<sup>2</sup> And yet about the same time, a jury of women were impanelled, on Captain William Carver's information, to examine Jane Jennings for witch spots, as she had been accused of being inti-

<sup>1</sup> Lower Norfolk County Antiquary, vol. ii., pp. 92, 93.

<sup>2</sup> *Ibid.*, vol. i., p. 20; Princess Anne County Records, Orders July 8, 1698.

mate with evil spirits and skilful in the arts of a sorceress.<sup>1</sup>

In re-examining the various cases of supposed witchcraft which I have enumerated as found in the surviving records of Virginia during the Seventeenth century, it will be seen that, in one instance only, that of William Harding of Northumberland county, was the accusation (and that in part alone) sustained by the decision of a court or the verdict of a jury. The convicted person in this case was simply banished, more probably because he was notoriously bad in his life or was looked upon as causing dissension, than because he was really considered to be capable of exercising evil powers. In all those other cases in which some one had charged another with being a sorcerer or sorceress, instead of the law officers accepting the imputation seriously, they had been satisfied either to impose a fine on the accuser for defamation, or to dismiss the case without allowing any damages at all. The impanelling of female juries to make a search for witch spots on the supposed sorceress' body was the only act that seemed to show any belief in this form of superstition on the part of that class in the community from which the different magistrates were drawn; but it is quite possible that this concession to popular ignorance was made because all the chances in such examinations were against the discovery of such spots. The tit sought for with the greatest eagerness was not one planted in the female body in the economy of nature, and the judges had sufficient knowledge of female anatomy to be willing to rely on the impossibility of finding it anywhere outside of the realm of the imagination.

<sup>1</sup> Lower Norfolk County Antiquary, vol. ii., p. 49.

The ancient superstition of stroking a corpse to discover whether the dead person had died by violence, or in the course of nature, was often exhibited in Virginia during this century. This was done at the inquest over the dead body of Panell Rynurse held in Northampton in 1655; at the jury's command, William Custis touched the inanimate face and ran his hand along the motionless form; and as no signs of life appeared in consequence, a verdict was brought in that the death had not been brought about by violent means.<sup>1</sup> A similar case occurred in Surry county in 1662; in this case, the body was a female servant's, and her master and mistress, who were suspected of having murdered her, were required at the inquest to stroke the corpse.<sup>2</sup> The idea in this, as in Rynurse's case, was that, if the person or persons touching the body were guilty, it would give some indications of returning life. A third case, involving a child's corpse is preserved in the records of Accomac. The supposed murderer here was also compelled to draw his hand over the body.<sup>3</sup>

<sup>1</sup> Northampton County Records, vol. 1654-5, folio p. 123.

<sup>2</sup> Surry County Records, vol. 1645-72, p. 205, Va. St. Libr.

<sup>3</sup> Accomac County Records, vol. 1678-82, p. 159.





## **Part II**

### **Education**



## CHAPTER I

### Sentiment in Favor of Education

THE physical conditions prevailing in Virginia throughout the Seventeenth century were not so favorable to popular education in the broadest sense of that term as those prevailing in New England. Almost the entire body of the latter colonies' inhabitants had their homes grouped together in the form of villages and towns, which, by concentrating the people of each neighborhood in one spot, made it practicable, at an early date, to carry out a scheme of instruction for each community. Virginia, on the other hand, was composed of a succession of plantations. The average area of the plantation acquired by patent previous to 1650 was about four hundred and forty-six acres; and after the middle of the century, about six hundred and twenty-eight.<sup>1</sup> It is probable that the average area of the landed estates owned in the Colony, should we combine the portions obtained by purchase, patent, and inheritance alike, fell little short of one thousand acres. Naturally, such large holdings had a strong tendency to disperse the population over wide reaches of country; there were comparatively few persons to the square mile, and it followed that, had a public school system been established, each schoolhouse would have been so

<sup>1</sup> See Bruce's *Economic Hist. of Va. in the Seventeenth Century*, vol. i., p. 528, et seq.

remote from the homes of most of the pupils that only those who were supplied with horses, and whose labor in the fields could be dispensed with by their parents, could have regularly attended its course of instruction. It was not as if the pupils were to be drawn from a town or village, in whose centre the schoolhouse had been built or from groups of thickly inhabited farms to which the same structure was conveniently situated; on the contrary, the pupils were so widely scattered that, to accommodate them all, the number of schoolhouses to be erected would have been out of proportion to the number of children to be taught, and far in excess of what each community could have afforded to construct, if reliance had to be placed on the public purse alone. In consequence of these facts, popular education did not take the same deep root in Virginia as it did in New England, where all the physical conditions, which alone caused the difference, were so much more favorable.<sup>1</sup>

There was, however, no side of the plantation system, as it prevailed in Virginia during the Seventeenth century, which was hostile to the setting up of numerous private schools for the benefit of all possessing the means to send their children to them. It would be the grossest error to suppose that the Colony was lacking in such schools, or even in a public school here and there resting on a private foundation; and that the only facilities for tuition were confined to the members

<sup>1</sup> "Their (the Virginians) almost general want of scholars for the education of their children is another consequence of their scattered planting of most sad consideration, most of all bewailed of parents there"; *Virginia's Cure*, p. 6, Force's *Historical Tracts*, vol. iii. In seeking, for a special purpose, to show the evil effects of this "scattered planting," the author of this pamphlet, there is good reason to think, underrated the number of "scholars" *i.e.*, competent teachers.

of a child's own family. The interest felt in education by the Virginians during that period was as strong as during any period of Colonial history; the principal reason for which is obvious:—at no period were the leading people of the Colony's different communities so much controlled by English influences in every department of their social and intellectual life. (Throughout this century, the most important citizens, with few exceptions, had been born and reared in England; the proportion of conspicuous persons of English birth was far larger in the Seventeenth century than in the Eighteenth; and as the members of this class of emigrants had, before they left their native country received as a rule, the best instruction which that country afforded in those times, it followed that they attached a high value to education; that they used their interest to promote by all feasible means its advancement among their neighbors; and above all that they showed a persistent determination that their own children should, as far as practicable, enjoy all its advantages.) Whilst there were no colleges, or even high schools, in Virginia comparable to those in which most of these emigrants had obtained their final course of instruction, still there is no reason to think that the general tuition secured by them for their own offspring was very much inferior to that which fitted a large majority of the Englishmen of that age for the ordinary business of life.

The desire of the Virginian parents of these early times to extend to their children opportunities of acquiring some sort of an education comes to light in numerous ways. (One of the most remarkable is the provision for this purpose made in last testaments.) A few examples may be given. One of the earliest

wills touching on this subject was that of John Waltham, of Accomac county, who died about 1640. Waltham left directions that, as soon as his son should reach the age of six, his "instructions of good learning" should begin; and with the view of affording that son the best education, he ordered his executors to confide him to some "good and godlye schoolmaster," selected with extraordinary care. From this, it would be inferred that schoolmasters were sufficiently numerous on the Eastern Shore, or at least in Virginia, at this time, to allow a considerable latitude of choice. It does not appear to be quite certain whether this boy was to be taught at his own home by a tutor, or to be removed to the home of his teacher, who would there also act as his guardian when not engaged with his studies. His father further enjoined that he should remain under this teacher's guidance until he had arrived at the age of eleven years; and to provide for all the expenses thus entailed, the executors were authorized to sell the entire annual increase, both male and female, of the cattle which the child had inherited. After his eleventh year had been passed, only the male cattle were to be sold for this purpose; and this sale was to continue until the boy had reached his eighteenth year, when his education was to cease, and he was to come into possession of all his property. In concluding, Waltham reiterated the request to his executors that they should hold the child in "their tender care, more especially in the particular care of his education, and breeding in the rudiments of good learning." <sup>1</sup> Throughout the will, it can be seen that the strongest desire animating the maker in drawing up this last expression of his wishes was that his son should enjoy some of

<sup>1</sup> Accomac County Records, vol. 1640-45, p. 38, Va. St. Libr.

those advantages of instruction which, in all probability, he himself had enjoyed in England before emigrating to Virginia; and there is no word in the whole of it to show that he felt any doubt that his ample provision would fail to assure the anticipated tuition simply because the Colony could not offer such advantages.

A few years after Waltham's death, Nicholas Granger, also of Accomac, followed his example in providing for his daughter's education by setting apart for that purpose a definite number of cattle.<sup>1</sup> Sometimes this was accomplished by a deed of gift in the donor's lifetime; in 1647, for instance, Susan English, of York, placed on record the present of a heifer to each of her children, the male issue of which were to be delivered to anyone providing the children with board, clothes, and tuition. This case illustrates, in a remarkable manner, so many parents' eagerness to obtain the advantages of schooling for their offspring, for apparently this little herd of cattle formed the bulk of Mrs. English's possessions. The fact that she herself was unable to write gives a touch of pathos to her solicitude.<sup>2</sup> In 1651, Robert Wilson, of Northampton, left directions by will that there should be appropriated from his estate for his brother's education thirty pounds sterling, which represented in modern values about seven hundred and fifty dollars, a very considerable sum to be devoted to such a purpose, and one large enough to assure instruction through several years. The boy was to be taught how to read, write, and cast accounts, with great ease.<sup>3</sup>

<sup>1</sup> Northampton County Records, vol. 1645-51, p. 93.

<sup>2</sup> York County Records, vol. 1638-48, p. 339, Va. St. Libr.

<sup>3</sup> Northampton County Records, vol. 1651-54, f. p. 13.



A father lacking in cattle, which might afford a steady annual income by the sale of their increase, sometimes provided for his child's education by requiring in his will that the proceeds from the labor of a slave should be set apart for that purpose; for example, in 1654, John Brown, of Northampton, ordered his executors to reserve the income derived from one of his negroes' work in the corn and tobacco fields, and to devote it to meeting the expense of tuition of the testator's son.<sup>1</sup> The benefits of such a provision, which was no small one in the light of an agricultural servant's value in that age, were not always confined to the children of the deceased; in 1654, Richard Vaughan who also resided in Northampton, bequeathed his entire estate to a family of blacks, probably his slaves, with instructions to his executors that its younger members should all be taught how to read.<sup>2</sup> And in the course of the same year, Thomas Wright, of Lower Norfolk, provided in his will for his children's enjoyment of the advantage of three years' instruction in school; which was probably designed as simply a continuation of the tuition they had been receiving in his own life time. During the whole of this period of three years, they were to reside on the plantation formerly possessed by their father; from this it is to be inferred that they were either to be taught by a tutor in their own home, or there was a private school situated sufficiently near for them to attend daily without inconvenience.<sup>3</sup>

Sometimes a father, in his last will, laid an express injunction on his oldest children to secure for his youngest the best opportunities for education offered

<sup>1</sup> Northampton County Records, vol. 1654-55, p. 86.

<sup>2</sup> *Ibid.*, vol. 1654-55, p. 102.

<sup>3</sup> Lower Norfolk County Records, vol. 1651-56, p. 134.

in the Colony; such was the case of Giles Taverner, of York, who, in 1655, after directing his two eldest sons to place the youngest at school, ordered that, for the payment of the expenses which this would impose, there should be appropriated the income from his "entire stock" for a period of two years.<sup>1</sup> Humphrey Clark, of Isle of Wight county, required his executors to keep the whole number of his agricultural servants together in one body, and to reserve one half of their labor's proceeds for meeting the cost of maintaining his son in the care of a competent teacher.<sup>2</sup> In 1657, Clement Thresh, of Rappahannock, in his will declared that all his estate should be responsible for the outlay made necessary in providing, during three years, instruction for his step-daughter, who, being then thirteen years of age, had, no doubt, already been going to school for some length of time. The manner of completing her education (which, it seems was to be prolonged to her sixteenth year) was perhaps the usual one for girls at this period:—she was to be taught at a Mrs. Peacock's, very probably by Mrs. Peacock herself, who may have been the mistress of a small school; for it was ordered in the will that, if she died, the step-daughter was to attend the same school as Thomas Goodrich's children.<sup>3</sup> Thomas Whitlock, also of Rappahannock, left directions, in 1659, that his son should be placed in the care of a teacher by his executors<sup>4</sup>; and the same year, Thomas Buck, of York, repeated the like directions in his will.<sup>5</sup> Samuel Fenn, who was also a citizen of

<sup>1</sup> York County Records, vol. 1633-94, p. 79, Va. St. Libr.

<sup>2</sup> Isle of Wight County Wills and Deeds for 1655.

<sup>3</sup> Rappahannock County Records, vol. 1656-64, orig. p. 74.

<sup>4</sup> *Ibid.*, orig. p. 91.

<sup>5</sup> York County Records, vol. 1657-62, p. 177, Va. St. Libr.

York, requested his executors to secure for his children the "utmost education which Virginia afforded"; and in order to provide an ample fund for this purpose, he enjoined them to sell the whole increase of his stock of cattle from year to year.<sup>1</sup> Edward Littleton, of Northampton, in his last testament contented himself with leaving instructions that his children should receive the most thorough and extensive tuition which their estates would allow them to pay for.<sup>2</sup>

In the course of 1666, Walter Bruce, of Nansemond, who had married the widow of Thomas Sayer, one of the most prominent citizens of Lower Norfolk, increased his stepchildren's estates by presenting them with a considerable number of cattle; four of these, during his absence from Virginia, his wife sold, and with the proceeds met the expense of sending a daughter to school.<sup>3</sup> By the terms of John Russell's will, his daughter was to continue to be educated until she should marry<sup>4</sup>; which her father perhaps presumed would occur when she should reach her sixteenth or seventeenth year; for, in those times, the majority of women found husbands generally before they had passed that age. Thomas Griffin, of Isle of Wight county, left, in 1669, directions for his executors to have his son of the same name placed in a teacher's care in order that he might learn how to read, write, and cast accounts; and should they fail to observe this injunction, they were required to deliver to him at least eight thousand pounds

<sup>1</sup> York County Records, vol. 1657-62, p. 248, Va. St. Libr.

<sup>2</sup> Northampton County Records, vol. 1657-66, p. 150

<sup>3</sup> Lower Norfolk County Records, vol. 1656-66, p. 438. Francis Sayer, a stepson of Bruce, was one of the justices of the county in 1671.

<sup>4</sup> "So long as she keepes herself without a husband"; *William and Mary College Quart.*, vol. iii., p. 154.

of tobacco<sup>1</sup>; which, no doubt, he was expected to use in covering the cost of the education his father wished him to receive. As a certain degree of discretion was to be exercised by him in the event that the executors were delinquent, it is probable that he had already arrived at his fifteenth year. Richard Jarratt, of Surry, who apparently could not himself write, though he may have been prevented, as was so often the case, by extreme sickness from signing his last will, left instructions similar to Thomas Griffin's for the education of his son. A like provision was inserted in the last testament of Edmund Howell of the same county; and in the last testament also of John Smith, of Essex; and of John Newell, of Westmoreland.<sup>2</sup>

In his will, drawn about 1667, George Ashall, of Lower Norfolk, apparently a tanner by trade, instructed his executors to sell thirty hides belonging to his estate and to expend the proceeds in "bringing his son up to school."<sup>3</sup> A few years afterwards, Thomas Gerrard bequeathed one thousand pounds of tobacco to meet the necessary outlay for "the learning and education" of a negro boy, who was either his illegitimate son, or a favorite body servant.<sup>4</sup> Robert Gascoigne, of Northampton, who had, by the terms of his will, divided his cattle among his children, made by the

<sup>1</sup> Isle of Wight County Records, vol. 1661-1719, p. 84.

<sup>2</sup> Surry County Records, vol. 1671-84, pp. 29, 372, Va. St. Lib.; Essex County Records, vol. 1692-95, p. 372, Va. St. Lib.; Westmoreland County Records, vol. 1690-99, p. 181.

<sup>3</sup> Lower Norfolk County Records, vol. 1666-75, p. 134.

<sup>4</sup> *William and Mary College Quart.*, vol. iv., p. 84. At a later date, Henry Wickliff, of Westmoreland county, instructed his executors to purchase of Mrs. Anne Washington two mulatto boys, probably his own children, the youngest of whom "was to be put to school until he could read English"; see Records of that county, vol. 1690-99, p. 186.

same instrument a gift of these cattle's male increase during a designated period, to his widow, provided that she should keep their son Robert at school until he had acquired a perfect knowledge of reading and writing; and their daughter Bridget also, until she could both read and sew with an equal degree of skill.<sup>1</sup> Five years later, Charles Dunn, of York, devised his residuary estate to Robert Calvert, with directions to his executors to see that he was "well educated."<sup>2</sup> William Rookings, of Surry, gave orders that the entire number of his slaves should, after his death, continue attached to his plantation with a view to the production of income sufficient, not only to pay off all the debts he had incurred, but also to cover the expense of providing "clothing and schooling" for his children. The degree of instruction which he designed for his son seems to have differed somewhat from that he intended for his daughters:—the boy was "to be brought up to good education," whilst the girls were to receive merely "what education may be fitting for them," a rather vague definition, which the executors were at liberty to interpret according to their own discretion.<sup>3</sup> In his will, bearing the date of 1679, John Waterson, of Northampton, declared that it was his "pleasure that his little son John should have three years' schooling"; and a similar provision was made the following year by Henry Hallstead, of Lower Norfolk.<sup>4</sup> Two years later, Richard Albretton, who left a daughter, followed their examples.<sup>5</sup> In every one of the preceding in-

<sup>1</sup> Northampton County Records, Orders April 20, 1675.

<sup>2</sup> York County Records, vol. 1675-84, orig. p. 90.

<sup>3</sup> Surry County Records, vol. 1671-84, p. 329, Va. St. Libr.

<sup>4</sup> Northampton County Records, vol. 1679-83, p. 67; Lower Norfolk County Records, vol. 1675-86, p. 200.

<sup>5</sup> York County Records, 1675-84, orig. p. 555.

stances, it is probable that the children, whose future instruction was so carefully arranged for, had already been receiving some instruction.

Peter Johnson, who resided in Rappahannock county, released his "son-in-law" from an indenture about 1680 on condition that he should take his brother-in-law or half brother Johnson's son, under his care until he should arrive at his twentieth year; in the meanwhile, the youth was to have, at the expense of his new guardian, the benefit of as "convenient an education" as could be given him."<sup>1</sup> In the course of the same year, John Davenport, of Lancaster, by will directed that his two young horses should be devoted to meeting the cost entailed by his son William's "schooling." The animals were probably to be hired out so as to afford an annual income; or they were to be used on the estate left by the testator in working designated fields of tobacco, the harvest of which was to be sold in order to carry out Davenport's intentions.<sup>2</sup> Mr. Francis Pigott, of Northampton, seems to have been interested in the continuation of his son's education only to a point where he would be able to "read a legible hand and also to write one"; apparently a modest aspiration, but when realized one that would signify the acquisition of a very considerable amount of knowledge.<sup>3</sup> In 1686, David Williams, of Isle of Wight county, instructed his executors to keep his sons under a teacher's care until they could read the Bible with facility; if the estate offered no easier or quicker way of furnishing the means to cover the expense of tuition, then a mare, which the testator had bequeathed to these sons,

<sup>1</sup> Rappahannock County Records, vol. 1677-82, orig. p. 17.

<sup>2</sup> Lancaster County Will Book, vol. 1674-87, p. 92.

<sup>3</sup> Northampton County Records, vol. 1683-89, p. 122.

was to be sold; and a like disposition was to be made of the same animal should there be income enough to insure their learning to read, but not to write.<sup>1</sup> About the same time, Prevost Nelson, of Northampton, in his will requested Rev. Thomas Teakle to take charge of his two sons and to see that they acquired the power to read and write "for the future benefit of their affairs, and the health of their souls."<sup>2</sup> Francis Pettit, of the same county, felt an even greater solicitude that his children should be educated:—he left directions that, should his widow be unable, out of her own income, to meet the expense of keeping the children at school, the plantation occupied by him in his lifetime was to be rented, and all the proceeds devoted to the cost of their tuition, until they should arrive at an age when they could, by their own labor, contribute to the fund which would be needed.<sup>3</sup>

Sarah Pigott, of Lower Norfolk, in framing her will in 1689 made her entire estate liable for the outlay required for her grand-daughter's education.<sup>4</sup> Michael Fulgham, of Isle of Wight county, about the same year, provided for the education of his children by instructing his executors to devote to this purpose the whole income to be derived from one of the plantations he had left to his heirs.<sup>5</sup> Sebastian Perrin, of Elizabeth City, in 1692 gave orders in his last testament that his cousin, to whom he had devised his property, should be "brought up to learning."<sup>6</sup> Francis Page, a member of one of the most distinguished families residing in the

<sup>1</sup> Isle of Wight County Records, vol. 1661-1719, p. 271.

<sup>2</sup> Northampton County Records, vol. 1683-89, p. 208.

<sup>3</sup> *Ibid.*, p. 350.

<sup>4</sup> Lower Norfolk County Records, vol. 1686-95, p. 99.

<sup>5</sup> Isle of Wight County Records, vol. 1660-1719, p. 307.

<sup>6</sup> Elizabeth City County Records, vol. 1684-99, p. 209, Va. St. Libr.

Colony, in his will requested Dudley Digges, his brother-in-law, who was acting as his executor, to bestow on his daughter the "best education which this country could afford."<sup>1</sup>

Nor was this desire to have their children grounded at least in the rudiments confined at this time to white persons; it extended even to the free blacks, who as yet made up but a small part of the African population. In 1693, Thomas Carter, of Northampton, a person of that race, ordered in his will that his three children should, after his death, be delivered to Thomas Gelding, to be held by him, evidently as agricultural laborers, until they were each nineteen years of age. The chief condition exacted of Gelding was that he should teach the young negroes how to read.<sup>2</sup>

In the course of the same year, Robert Harper, of Princess Anne county, a white planter, left directions that the entire income annually accruing from the sales of tobacco obtained from two of his plantations should be expended in the education of his three children. Although this income must have represented a very considerable sum, the extent of the tuition which he wished to have imparted does not appear to have been very ambitious,—each child, it seems, was to be taught until he or she could read "true English" with perfect ease; but the sons alone were to be instructed in the rules of arithmetic; and only in these rules "so far as would be needful for this country's affairs."<sup>3</sup>

<sup>1</sup> York County Records, vol. 1690-94, p. 170, Va. St. Libr.

<sup>2</sup> Northampton County Records, vol. 1689-98, p. 250.

<sup>3</sup> Princess Anne County Records, vol. 1691-1708, p. 52. William Moseley, of Princess Anne county, in 1699, left directions in his will that his children should "be brought up in such learning as is most useful and necessary for this country's affairs"; see Records, vol. 1691-1708, p. 226.



Colonel William Ball, of Lancaster, who died about 1693, inserted in his will a request that his wife should teach each of their youngest children until he or she should arrive at their sixth year; after which age, all were to receive instruction from their two eldest brothers. The mother's task was to be confined to imparting a knowledge of reading, writing, and the like simplest rudiments, whilst the brothers were expected to give tuition in the higher branches of learning.<sup>1</sup> In the following year, Mr. John Custis, of Northampton, made what must, in those times have appeared as a very liberal provision for the education of his grandson, who bore the same name as himself:—he left directions in his will that the proceeds from the labour of fourteen slaves should be devoted to meeting all the costs incurred for the boy's maintenance and tuition. This was probably designed for paying his expenses up to a certain age, during which time, he was expected to remain in Virginia, since a special provision in addition was made to cover his expenses during his stay in England, where his education was to be completed. Fourteen slaves formed a large and valuable working force at this early period; and the income to be derived from their production of tobacco alone was sufficient for the ample support and the thorough instruction of the youthful Custis.<sup>2</sup>

A prominent citizen of Essex county about this time enjoined in his will that his son should be sent to school when fourteen years of age, and kept there until he was eighteen; in this case, it is quite probable that the boy had already been receiving instruction at home, and that it was his father's wish that he should, when older,

<sup>1</sup> Lancaster County Records, vol. 1690-1709, folio p. 45.

<sup>2</sup> Northampton County Records, vol. 1689-98, p. 358.

enjoy the advantages of a more advanced tuition; which was only obtainable at a regular school.<sup>1</sup> Vincent Cox, of Westmoreland, provided in his will for his daughter's education during the first two years after she had passed her tenth year. In this case also, tuition away from home was evidently intended, as it seems improbable that her instruction in the rudiments had been so long deferred. His son was to receive tuition for one year only after he had reached the same age; he also, no doubt, had been taught up to a certain point, by some member of his family.<sup>2</sup>

<sup>1</sup> Essex County Records, vol. 1695-99, orig. p. 127.

<sup>2</sup> Westmoreland County Records, vol. 1690-99, folio p. 174.

## CHAPTER II

### Sentiment in Favor of Education (*Continued*)

THE wills of the Seventeenth century reflect hardly more vividly the general esteem in which education was held in Virginia at that time than the long series of orders adopted by the justices respecting the tuition of orphans who had been bound out under articles of indenture, or had been placed in the care of guardians. (Over no section of the community did the county court exercise a more exacting supervision than over the children who had lost their parents by death; a special session of that body was held in each county at least once a year for the purpose of passing upon all matters relating to their welfare; and in no particular does that court appear to have been more scrupulous and jealous than in requiring that its commands as to education should be strictly carried out.<sup>1</sup> If the child was without property, and had to serve an apprenticeship to earn a livelihood, then a clause had to be inserted in his articles of indenture to compel his master or mistress to give him instruction in reading, writing, and arithmetic; and if, on the other hand, he had inherited an estate, which assured him an ample support without

<sup>1</sup> Beverley's *History of Virginia*, p. 209. For a special instance of this extraordinary care on the part of the county courts, see Westmoreland County Records, Orders July 27, 1692.

making use of the labor of his hands, then his education was to be pushed so far as his income allowed.)

A few illustrations of the spirit animating the county court in its relation to the tuition of orphans may be given. First, as to those possessing property. In 1638, George Ford, as the guardian of John Saker, of York, was required by the justices of that county to present an account of all the costs which he had so far incurred in the boy's education. From this account, it would appear that he had, for that purpose, paid out, during the first year, two hundred pounds of tobacco, and during the second, one hundred and fifty.<sup>1</sup> Eight years later, William Hawkins, as the guardian of an orphan who had inherited a considerable stock of cattle from his grandfather, was instructed by the justices of York, in which county the parties resided, to devote only the herd's male increase to his ward's maintenance and tuition, as that would be amply sufficient for both.<sup>2</sup> In the first of these cases, the guardian was reimbursed for advances; but by an Act passed in 1656, no person performing these duties thereafter was to be permitted to receive an allowance from court for himself for money paid by him for the education of any child under his care, who was in possession of sufficient property to meet that expense out of his own income. The cost of his education, to use the words of the statute, must be covered by the "interest of the estate according to the proportion of the estate."<sup>3</sup> There are numerous proofs that the Act was strictly enforced. In 1668, Captain John Scarbrooke was directed by the county court of York to assume

<sup>1</sup> York County Records, vol. 1638-48, pp. 55, 61, Va. St. Libr.

<sup>2</sup> *Ibid.*, vol. 1638-48, p. 182, Va. St. Libr.

<sup>3</sup> Henning's *Statutes*, vol. i., p. 416.

charge of the person and property of Dorothy Tucker, an orphan girl, and to expend for her maintenance and instruction an amount that would be in due proportion to the value of her estate; but it must be drawn exclusively from the profits.<sup>1</sup> Ten years later, Morgan Bouldin, the stepfather and guardian of Elizabeth Longe, assured the justices of Northampton that he would, during the following two years, send her to school; which was probably done only after the court had reminded him that he was neglecting her education.<sup>2</sup> Sometimes, the orphan himself called the county court's attention to his guardian's dereliction in this respect; for example, in 1678, Thomas Bonnewell, of Accomac, informed the justices of that county that, in consequence of his stepfather having left the country, he was not receiving the tuition to which he was entitled by law; he petitioned that George Hope should be named as his guardian; and this was done on Hope's promising to secure for his ward the instruction he was so anxious to receive.<sup>3</sup>

It shows how numerous were the instances of bonds in which guardians bound themselves to educate the orphans in their care that, in one series of records alone, namely, those of Surry county, belonging to the interval between 1679 and 1684, a period of five years, there are to be found fifty documents of this kind entered. Each guardian in these and similar cases placed himself under a legal obligation, not only to deliver up the orphan's estate when he came of age, but also to have him taught in school "honestly according to his degree<sup>4</sup>;"

<sup>1</sup> York County Records, vol. 1664-72, p. 283, Va. St. Libr.

<sup>2</sup> Northampton County Records, vol. 1674-79, p. 225.

<sup>3</sup> Accomac County Records, vol. 1678-82, p. 40.

<sup>4</sup> Surry County Records, vol. 1671-84, pp. 558-584, Va. St. Libr.

or to use another expression which was even more characteristic of the times:—"according to his quality."<sup>1</sup>

The county court was, if possible, stricter still in ordering a certain amount of instruction to be given to all orphans without any estate whatever, who had to be bound out as apprentices to obtain a livelihood. The provisions of the respective indentures of boys and girls differed as to the manner of their employment, but not at all as to the extent of their education,—the stipulations as to tuition were precisely the same in the case of both sexes. The indentures of Anne Andrewes, who lived in Surry about 1658, required her master to teach her, not only how to sew and "such things as were fitt for women to know," but also how to read, and apparently also how to write.<sup>2</sup> Dorothy Thorne, of the same county, was, in 1666, constrained by the terms of her indentures to serve her master, Charles Barham, during a period of six years; and he, in return, was to furnish her with the customary necessities, and also to instruct her in the art of reading.<sup>3</sup> A like provision was, in 1678, inserted in the indentures of Winifred Young, of Lower Norfolk.<sup>4</sup> In 1690, a girl was bound out to Captain William Crafford, of the same county, under indentures which required him to teach her how to spin, sew, and read<sup>5</sup>; and in the course of the same year, Robert Monagan, of York, was also required by a like instrument to assure Rebecca Francis a full year's instruction "in reading the vulgar tongue."<sup>6</sup>

<sup>1</sup> Westmoreland County Records, Orders July 27, 1692.

<sup>2</sup> Surry County Records, vol. 1645-72, p. 121, Va. St. Libr.

<sup>3</sup> *Ibid.*, vol. 1645-72, p. 362, Va. St. Libr.

<sup>4</sup> Lower Norfolk County Records, Orders March 18, 1678.

<sup>5</sup> *Ibid.*, Orders Aug. 15, 1690.

<sup>6</sup> York County Records, vol. 1687-91, p. 514, Va. St. Libr.

The preceding instances, which might be greatly added to, all show that the ordinary indentures of orphan girls were modelled on exactly the same lines; and that from the earliest to the latest case in the century, there was no omission of the provision requiring their education in the rudiments.

The same provision was, with equal regularity, inserted in the indentures of all male apprentices. When the term of service was to continue for a prolonged period, the obligation assumed in 1667 by Daniel Wyld, of York county, in entering into indentures with Valentine Harvey, was not unusual,—he promised, at his own expense, to keep young Harvey at school during at least three of the fourteen years agreed upon as the length of the apprenticeship. That the instruction was, in many instances, to be given by an experienced schoolmaster is shown by the condition of this instrument, which relieved Wyld only in case the parish should be without such a teacher.<sup>1</sup> This clause was inserted in order to save Wyld from incurring the cost of boarding the boy in the home of a schoolmaster residing at a distance, should there not be one near at hand to whom he could go for his lessons from day to day. In 1672, Eleanor Nash, of Lower Norfolk, in binding out her son, expressly stipulated that he should be taught how to read the Bible.<sup>2</sup> Edward Wood, who, a few years later, entered into indentures with a shoemaker of this county, was, by the provisions of that instrument, to be instructed in the art of both reading and writing; and a like clause was inserted in the indentures of William Pell, who, in 1685, was bound out to a carpenter residing in Rappahannock. The same benefit was to

<sup>1</sup> York County Records, vol. 1664-72, p. 202. Va. St. Libr.

<sup>2</sup> Lower Norfolk County Records, vol. 1666-75. p. 135.

be afforded Samuel Bennett, the apprentice of Robert Clarke, a cobbler of Northampton county.<sup>1</sup>

The extraordinary importance attached to the clause in indentures assuring the child's instruction in the rudiments of learning is revealed by a case that occurred in York. A dispute arose there, in 1681, between Mary Wilkinson and one Platt over the question of the tuition to be afforded the former's son while serving a term as Platt's apprentice; the mother insisted that the master should bind himself to "give the boy learning," whether or not it could be conveniently done; but Platt was only willing to agree to such instruction in case there should be a schoolmaster close at hand.<sup>2</sup> (That the action of a master who had promised to have his apprentice taught was jealously watched is shown by a second instance occurring two years later; in 1683, a suit was entered by Alice Alvis, of Henrico, against Richard Ligon, in which he was charged with failure to "educate and maintain" her son in conformity with the provisions of the indenture; but the court decided that the allegation had not been sustained.<sup>3</sup>) A similar case occurred, in 1685, in Rappahannock; Hawkins Snead, an orphan, complained to the county court that Captain Bloomfield was detaining him as a servant, although Major Thomas Hawkins (whose widow Bloomfield had married) had solemnly promised him a "liberal education." The justices having decreed

<sup>1</sup> Lower Norfolk County Records, Orders Aug. 15, 1682; Rappahannock County Records, April 1, 1685; Northampton County Records, vol. 1689-98, p. 525. Sometimes the indentures required that the boy should also be taught the Lord's Prayer and the Ten Commandments; see Elizabeth City County Records, Orders for 1694, p. 30.

<sup>2</sup> York County Records, vol. 1675-84, orig. p. 359.

<sup>3</sup> Henrico Minute Book, 1682-1701, p. 48, Va. St. Libr.



that Snead must continue in Bloomfield's service, he appealed to the General Court, evidently on the ground that, as Hawkins's representative, Bloomfield was legally bound to carry out Hawkins's promise to give a more extended tuition than apprentices were in the habit of receiving.<sup>1</sup>

The two orphan children of William Davis, of York, were, in 1687, bound out to a citizen of that county under indentures requiring him to keep them at school at least three years.<sup>2</sup> William Neale, an apprentice of William Leake, of Essex, was to receive tuition for a term of one year; and Thomas Jackson, an apprentice of Bernard Gaines, of the same county, for a term of two.<sup>3</sup> It will be seen from the provisions inserted in these three indentures that the length of the instruction to be given depended upon the agreement reached by the master and the parent of the child; and this was, no doubt, true in every instance of the schooling afforded under these circumstances. There seems to have been no general term prescribed either by law or custom.<sup>4</sup>

Among the persons residing in the Colony in the latter part of the Seventeenth century were a large number of youths, who, having been educated at Christ's Hospital in the City of London, had afterwards found employment as regular apprentices with different masters in Virginia. In 1692, the head of that great charity school complained that no letters from these

<sup>1</sup> Rappahannock County Records, Orders Aug. 5, 1685.

<sup>2</sup> York County Records, vol. 1687-91, p. 116, Va. St. Libr.

<sup>3</sup> Essex County Records, Orders Sept. 10, Nov. 10, 1698.

<sup>4</sup> The county court apparently contented itself with inserting in the indentures of an orphan the provision that "he should be put to school," without giving directions for how great a length of time; see case of John Clyborn in Henrico Minute Books, vol. 1682-1701, p. 196, Va. St. Libr.

youths were ever received in England; and under the influence of this reproach, the Governor and Council of the Colony addressed a communication to each county, commanding their several masters to see that the boys wrote at least twice a year to the authorities of the Hospital; and the justices were required to enforce this order.<sup>1</sup> These boys had, before leaving England, received such an extended course of instruction that they would have been, had they desired to follow that pursuit, fully competent to serve as schoolmasters themselves, provided that the tuition was not to be carried very far in the field of learning.

<sup>1</sup> See Order of Governor and Council in Essex County Records, vol. 1692-95, p. 188, Va. St. Libr.

## CHAPTER III

### How the Virginians were Educated: English Schools

WHO were the schoolmasters of the Virginians in the Seventeenth century, and where were situated the schools in which the young people of that day received instruction? It can be easily understood that the disposition of most parents would have been to send their children to England to be taught: first, because the Mother Country offered so many advantages of education to which the Colony could make no pretension; secondly, because there they would enjoy so many influences outside of the schoolroom which would broaden and liberalize their minds; and finally, because there also they would be brought into intimate association with all the members of their family connection who had not gone out to the plantations overseas. But even when a father possessed ample means to meet the expense of educating his children in England, several considerations made him hesitate to send them thither for that purpose, ardently as he might have it at heart. The voyage across the ocean in these early times was far more perilous than it is in this day of rapid transportation and innumerable lighthouses along every coast. The imagination of the colonists, accustomed to an easy and uneventful existence on their own estates, must have imparted to that voyage

even greater terrors and dangers than really belonged to it. To leave a girl or boy with a sea-captain, however well known and respected in Virginia, to pass over that vast world of threatening waters in a frail sailing vessel must have seemed to most parents a step involving a fearful responsibility; and this state of mind was only confirmed when they thought of the long years to go by before they could hope to see their child again; of the months that it would require even to exchange letters with him; of the sickness that might overtake him among strangers; of the dissipations which might seduce him in his inexperience; and of the lack of some one who might lend him constantly a guiding and helping hand.

In spite of all these obstacles and drawbacks to the education of the wealthier class of young colonists in England, a very considerable number even in the Seventeenth century were sent over-sea to receive instruction in the foremost schools and colleges of the Mother Country. How great was that number can never be accurately known in consequence of the destruction of so many of the records that belonged to these early times. From entries here and there in the few surviving county records, we learn incidentally and by accident as it were, of some young Virginian of this period having enjoyed so extraordinary an advantage. Had all the private correspondence of the leading families of that century been preserved with the same care as the letter books of the elder William Byrd and William Fitzhugh, it would be seen that a greater proportion of the members of these families were educated in English institutions of different grades than is now generally supposed to have been the case.

One of the earliest of the young Virginians to receive

tuition in the Mother Country was Henry Sewell, of Lower Norfolk county; when quite young, he was sent over-sea, and seems to have attended school at Yarmouth.<sup>1</sup> Ralph Wormeley, the younger, who was born at Rosegill, the home of his father in Middlesex county, was, in 1665, matriculated at Oriel College, Oxford, when only fifteen years of age.<sup>2</sup> Col. John Catlett, of Rappahannock, left directions to his executors that all his children should be educated in England, and that the entire income from his estate should be expended in meeting the expense thus to be entailed.<sup>3</sup> In 1658, the son of Augustine Warner, who bore the same name as his father, was enrolled as a pupil in the Merchant Tailors' School in the City of London<sup>4</sup>; and probably at a later date attended a higher seat of English learning. John Lee, the eldest son of Col. Richard Lee, entered Queen's College as an upper commoner, and four years afterwards received the degree of bachelor-of-arts; after his graduation, studying medicine, he succeeded in obtaining the diploma of a Doctor of Physic. His brother, Richard, was also educated in England, and acquired such scholarship that, in after life, he was in the habit of writing marginal notes in his books indiscriminately in Latin, Greek, and Hebrew.<sup>5</sup> Richard Sturman, of Westmoreland, instructed his executors to send his children to England, where they were to receive as extended a course of

<sup>1</sup> Lower Norfolk County Records, vol. 1651-56, p. 79.

<sup>2</sup> *Va. Maga. of Hist. and Biog.*, vol. vii., p. 283. Col. Ralph Wormeley's sons Ralph and John both attended school in England, see *Va. Maga. of Hist. and Biog.*, vol. viii., p. 180.

<sup>3</sup> *Ibid.*, vol. iii., p. 63.

<sup>4</sup> Neill's *Va. Carolorum*, p. 419.

<sup>5</sup> *Lee of Virginia*, pp. 66, 70, 75. Dr. Lee's library was valued at 4000 pounds of tobacco. He died in 1674.

tuition as the income of his estate should permit.<sup>1</sup> When John Cary set out for the Mother Country in 1671, he was accompanied by his youthful brother-in-law, Walter Flood, who was to be entered at an English school as soon as they arrived on the other side.<sup>2</sup> Two years afterwards, Mrs. Elizabeth Butler, of Rappahannock, gave very strict injunctions to her executors to be careful to provide each year the amount of tobacco needed to meet the expense of her children's education in England, and also of the voyage when they returned to Virginia. These children at the time when the will was written were already receiving instruction in English schools, and it was their mother's wish apparently that this instruction should be continued for many years more.<sup>3</sup>

In 1674, Philip Chesney left directions in his will that his two nephews, who were then, it would appear, residing in England, should be sent up to London, where they were to remain at school four years, and then to go out to Virginia, to follow there such pursuits as their aunt should consider best suited for them.<sup>4</sup> Henry Perrott was entered as a student at Gray's Inn in 1674.<sup>5</sup> In the course of 1680, the attorney in Virginia of Hugh Williams, of Bristol, brought suit against the stepfather of George Parker, of Northampton, to recover thirty-four pounds and ten shillings due Williams for the instruction received by the young man while passing three years in that city for that

<sup>1</sup> Westmoreland County Records, vol. 1653-72, p. 344. It seemed to be Sturman's wish that his children should remain permanently in England.

<sup>2</sup> Surry County Records, vol. 1645-72, p. 420, Va. St. Lib.

<sup>3</sup> Rappahannock County Records, vol. 1664-73, p. 65, Va. St. Lib.

<sup>4</sup> York County Records, vol. 1671-94, p. 93, Va. St. Lib.

<sup>5</sup> *William and Mary College Quart.*, vol. vi., p. 173.

purpose. In addition to tuition, Parker had been provided with board, lodging, and clothes.<sup>1</sup> About 1678, Elizabeth Godson, of Rappahannock, was in the charge of Thomas Roberts, a relative residing in the same county, who seems to have also acted as her teacher. In his will, drawn in the course of this year, Peter Hopegood, apparently her stepfather, left directions that she should remain at school at Mr. Roberts's until 1680, but in that year she was to be taken to England, there to continue her education under the guardianship of an uncle who had never emigrated.<sup>2</sup> Three years later, Dominick Rice, also of Rappahannock, instructed his executors to send his son Stephen, as soon as he was five years of age, to his grandfather's home in Ireland, where he was to be taught for such a length of time as his grandfather should approve.<sup>3</sup>

John Savage, of Northampton, provided in his will that a horse and mare, two steers and two cows, with their increase, should be reserved to create a fund for paying all the expenses to be incurred by his son Thomas in attending school in England. Savage, who possessed one of the largest estates, both in realty and personalty, held by any citizen of the Eastern Shore, seems to have attached an unusual value to education; in his will, he also provided for the tuition of his two daughters and a second son by requiring his executors to hire out three servants, apparently to the teacher to be engaged; the proceeds of their labour to constitute this person's remuneration for imparting the stipulated

<sup>1</sup> Accomac County Records, vol. 1678-82, p. 187.

<sup>2</sup> Rappahannock County Records, vol. 1677-82, p. 71, Va. St. Libr.

<sup>3</sup> *Ibid.*, vol. 1677-82, orig. p. 42.

instruction, which was to be continued during a period of five years. Since no arrangement seems to have been made for the completion of their education in England, it is probable that this particular advantage was enjoyed by the eldest son alone as the one supposed to represent the family first, and perhaps inheriting the bulk of the estate.<sup>1</sup>

(The younger William Byrd, probably the most accomplished gentleman produced by colonial Virginia, after obtaining his earliest instruction at home, was sent by his father to Holland, which, in those times, possessed a high reputation especially for the opportunities it offered for a training in business. In 1685, he was receiving lessons from a tutor in England<sup>2</sup>; and that he made the most of the advantages thus afforded to acquire a thorough insight into his own language was shown by the extraordinary graces of his writings. His culture reflected the spirit of the most admirable literary schools of that day. Nor was he content with a learning restricted to ancient and modern belles-lettres. Before returning to Virginia in 1696, he became a student in the Middle Temple, and thus added a special knowledge of law to the literary and business information which he had already obtained. He was elected a member of the House of Burgesses a few months after the completion of his education, and that body had probably never before found in its membership a young man of more highly cultivated talents or more polished manners.)

In 1692, while Byrd was perfecting in London his social and intellectual accomplishments, a son of Christopher Robinson, of Middlesex county, was also

<sup>1</sup> Northampton County Records, vol. 1674-79, p. 316.

<sup>2</sup> Letters of William Byrd, March 31, 1685.



at school there; and his father, who passed away in the course of that year, was careful to provide for the continuance of his son's studies by an order that fifty pounds sterling (equal in purchasing power to twelve hundred dollars in modern currency) should be reserved for the payment of his expenses.<sup>1</sup> Henry Hartwell, the distinguished lawyer, who died in England, whither he had been called on colonial affairs, and where his last testament was drawn and registered, instructed his English executors to bring over his nephew of the same name, at that time in Virginia, and to see that he obtained the most thorough education which the English institutions of that day could offer. His tuition was to continue until he had reached his twenty-first year.<sup>2</sup> John Custis, of Northampton, left directions in his will that one hundred pounds sterling should be set apart from his estate to meet all the costs incurred by his grandson in attending an English school.<sup>3</sup> In one of his letters, William Fitzhugh stated that but for his finding an excellent tutor in the pastor of the Huguenot refugees who had settled near him, he would have sent his eldest son to England to be educated.<sup>4</sup>

<sup>1</sup> *Va. Maga. of Hist. and Biog.*, vol. vii., p. 19.

<sup>2</sup> Will of Henry Hartwell, Waters's *Gleanings*, vol. i., p. 314.

<sup>3</sup> Northampton County Records, vol. 1689-98, p. 359. See paragraph in Chapter I., Part II., of the present History for the general provisions made by his grandfather for the education of this boy.

<sup>4</sup> Letters of William Fitzhugh, July 10, 1690.

## CHAPTER IV

### Private Tutors

A VERY large proportion of that section of the children of the wealthy planting class who received their education entirely in Virginia were indebted to private tutors for the greater part, if not for the whole, of their instruction before they came of age. Sometimes these tutors' task was confined to imparting a knowledge of the rudiments, whether of the English tongue or the ancient languages; more frequently, however, carrying their pupils into wider fields, they gave them all the education which, in those times, could be obtained outside the walls of advanced schools and colleges like those established in England. (When his employer's children were numerous, the tutor found his hours fully occupied in teaching them alone; but in the Seventeenth century, as at later periods in the history of Virginia, it was frequently the custom for the neighbors' sons and daughters to join the boys and girls whose father had engaged such an instructor's services and all together to receive their lessons from him. These children from adjoining plantations generally walked or rode over daily to attend school; but sometimes, especially when they were kinsmen of the family employing the tutor, they remained for the session under the same roof as boarders.)

The men who earned their livelihood as tutors in private families were obtained from different places. Some of them came directly from England. In 1652, Nicholas Haywood, of London, wrote to Nathaniel Pope, a resident of the Northern Neck, to inquire whether he would like to engage the services in this character of Samuel Motherhead, who was warmly recommended as fully equipped to teach Pope's children successfully. "He can write a very good hand," Hayward stated in his letter, "cypher very well, and be able to keep your accounts."<sup>1</sup> It will be seen from this that the private teacher was often expected to make himself useful in the house outside of the precincts of the schoolroom. William Reynolds, who resided in the same part of the Colony, mentioned in his will, dated 1655, that he had obtained a young man from York (presumably in Virginia) for the purpose of instructing his children. The consideration offered and accepted, was to furnish him, free of all charge, with "meat, drink, lodging and washing" during the period covered by the contract, and at the end of that time to grant him, without rent, for a term of three years, ground in which to plant tobacco and corn, and barns in which to store these crops when harvested.<sup>2</sup> About the time when this contract was made, John Johnson, of Northampton, agreed to take into his own home John Rogers's son, and to teach him to read and write with perfect ease; and he bound himself not to employ the boy in any department of work that would, in the slightest degree, withdraw his attention from his books. His education having been continued until his thirteenth

<sup>1</sup> This letter, which is recorded in Northumberland, is printed in *William and Mary College Quart.*, vol. xi., p. 171.

<sup>2</sup> Northumberland County Records, Orders November 20, 1655.

year, he was to be then sent, at Johnson's expense, either to England or to Holland, where he was to serve an apprenticeship in order to acquire a thorough knowledge of some handicraft which would afford him a certain livelihood.<sup>1</sup> In 1662, Robert Jones occupied the position of tutor in the family of John Hansford, in York county<sup>2</sup>; and it was to him, no doubt, that Major Thomas Hansford, who followed so bravely Bacon's fortunes and perished with so much fortitude, the noblest of all the victims of Berkeley's insane wrath, was indebted for his earliest instruction, and perhaps for some of that patriotic spirit which made him ready to sacrifice even life itself in resisting the tyranny of the selfish reactionaries then controlling the affairs of the Colony.

Elizabeth Charlton, the greatest heiress in Northampton county, was, about 1662, when she was only twelve years of age, persuaded by John Severne to run away from Captain Jones's residence, where we are informed "she was in care for her education." Severne was condemned and severely reprimanded for having "stolen ye said Elizabeth from school."<sup>3</sup> His conduct was regarded as so scandalous that a special session of the county court was held to pass upon his offence, which was evidently aggravated in the justices' minds by the abrupt and permanent termination of the young lady's education, brought about by her flight.

<sup>1</sup> Northampton County Records, vol. 1651-54, p. 131. John Johnson is spoken of in a Northampton county deed as of "Graft in Holland"; see Bruce's *Economic History of Va.*, vol. i., p. 351.

<sup>2</sup> *William and Mary College Quart.*, vol. vi., p. 5.

<sup>3</sup> Northampton County Records, vol. 1657-64, p. 158. Severne seems to have induced Elizabeth Charlton to run away for the purpose of marrying not himself, but another person, to whose house she was first taken.

Elizabeth Charlton was probably attending school at Captain Jones's because a tutor was domiciled there, whose services also extended to the children of the nearest planters. As it was difficult for a girl to walk or ride backwards and forwards daily, it happened more frequently in their case than in the case of boys that their parents obtained board for them with the neighbor employing a teacher. For example, in 1663, Richard Burkland agreed with Richard Kellam, both being citizens of Accomac, not only to give his daughter lessons in reading and writing, and in casting accounts, but also to supply her with food, and apparently also to furnish her with lodging.<sup>1</sup> A few years later, Martha Willett, the daughter of a well-known planter of Northampton, the adjoining county, was placed under the care of Mary Coar, who, in consideration of one thousand pounds of tobacco, contracted to teach her for a term of one year.<sup>2</sup>

Francis Browne and his wife, who resided in Rapahannock, in conveying a tract of land to Richard Glover, in 1666, stated that a part of the consideration received from him was the one year's schooling which he had already bestowed on their daughter.<sup>3</sup> This was perhaps only the beginning of her course of instruction. It would seem that, like the young man from York employed by William Reynolds in the adjoining county of Northumberland, to whom we have already referred, Glover taught in the Brownes' home under promise of their remunerating him by a gift of land. In 1668, Henry Spratt, of Lower Norfolk, sued George

<sup>1</sup> Accomac County Records, vol. 1663-66, folio p. 6.

<sup>2</sup> Northampton County Records, vol. 1683-89, p. 118.

<sup>3</sup> Rapahannock County Records, vol. 1663-68, p. 77, Va. St. Libr.

Ashwell to compel the payment of fees due him for the tuition of Ashwell's son. As these fees included a charge for "diet," the boy, no doubt, had been boarding at Spratt's while attending school.<sup>1</sup> In this case, it is also quite possible that Spratt had not himself been the tutor, but that instruction had been given by a teacher in his employment.

Sometimes the planter's sons as well as daughters received tuition from female teachers; about 1693, for instance, Katharine Shrewsbury, of Richmond county, was, during eighteen months, employed in instructing the son of Richard Tompkins. Katharine seems to have made some pretension to medical knowledge, for on one occasion, she brought suit against Peter Foxon on the ground that she had restored him to health; but the court refused to sustain her claim.<sup>2</sup> The following year, John Waters, of Essex, sought, but failed, to obtain judgment against William Johnson charged with the breach of a contract requiring him to pay nine hundred pounds of tobacco in consideration of Waters's receiving into his house Johnson's nephew, William Tunstall by name, and teaching him how to write a legible hand. This also involved his learning how to read.<sup>3</sup> A far more competent and accomplished instructor was the pastor of the Huguenot refugees who, for several years, acted as the tutor of one of William Fitzhugh's sons. The boy seems to have boarded under this clergyman's roof, and as only the French language was spoken there, he soon came to use that tongue with as much facility as the one to which he was born. Among other studies,

<sup>1</sup> Lower Norfolk County Records, vol. 1666-75, p. 30.

<sup>2</sup> Richmond County Records, Orders May 3, 1693.

<sup>3</sup> Essex County Records, Orders May 10, 1694.

he was grounded in Latin; but even in this branch of learning he was taught in French text; about 1690, Fitzhugh requested one of his correspondents in London to forward to Virginia at once a French Latin grammar, a French and Latin dictionary, and three French Common Prayer books, all for the use of this son.<sup>1</sup> Referring to his younger daughters in his will, drawn about 1699, Henry Williamson, of Essex, declared that, should "they grow stubborn and not conformable to their elder sister and tutors, then they were to be put out to such tutors as they should think convenient for their further education."<sup>2</sup> It would appear from this order that the choice of new teachers was to be left to the younger sisters whenever they grew dissatisfied with the old.

✓ Not infrequently, the tutor in a private family was a person under indentures. In the vicissitudes of those times, whether political or otherwise, many men of no common acquirements were compelled to earn a subsistence by hiring themselves out for the performance of different kinds of service. In the great body of agricultural labourers drawn to Virginia from the Mother Country, there were individuals who had failed in higher pursuits, or who, having become involved in trouble in their native land, were induced to seek a new home over-sea. Among these men, and even among the convicts, there were found some who had received an excellent education in the most respectable English schools, and who were, therefore, fully competent, from the point of view of knowledge at least, to instruct the young. This was well known to the planters. In the light of this fact, it is no cause for

<sup>1</sup> Letters of William Fitzhugh, July 10, 1690.

<sup>2</sup> Essex County Records for 1699, p. 81; see Williamson Will.

surprise to find, for instance, that John Carter, of Lancaster, a citizen of high standing, and one in possession of a large estate, left directions in his will that a servant should be purchased for the exclusive purpose of teaching his son Robert (afterwards the famous "King" Carter) "in English and Latin."<sup>1</sup> Thomas Hellier stated in his history of his own life that his master, who resided in Westover parish, had promised to employ him as a tutor for his children, and that he was not to be set to work in the fields except when there was an extraordinary demand for labor about the crops; and then only for a "short spurt."<sup>2</sup>

Sometimes, when the planter's family was a large one, he caused a schoolhouse to be erected for their use in the immediate vicinity of his residence; or it formed a part of the residence itself; which latter seems to have been the case with the schoolhouse situated at the home of Col. John Ashton, one of the wealthiest and most prominent citizens of Westmoreland county.<sup>3</sup> It was here that a tutor instructed the children, not only of Colonel Ashton himself, but also quite probably of many of his nearest neighbors. The relations between such a tutor and his employer often became strained; for instance, in 1678, Mr. Charles Leatherbury, who resided on the Eastern Shore, having fallen into a dispute with John Matts, forbade him to "tarry in his house"; and in consequence, Matts brought suit against him, apparently for a breach of contract. Matts is designated in the records as following the schoolmaster's calling, and it was only in that character

<sup>1</sup> *William and Mary College Quart.*, vol. vi., p. 5.

<sup>2</sup> *Life of Thomas Hellier*, pp. 10, 11.

<sup>3</sup> *Westmoreland County Records*, vol. 1665-77, p. 324.



that he seems to have had a cause of difference with Leatherbury.<sup>1</sup>

<sup>1</sup> This reference will be found either in Accomac or Northampton County Records, vol. 1678-82, p. 29. We find the following reference to Matts in the Accomac records: "Deposition of Mr. James Matts saaith that, about fourteen years past, being att the house of Mister Hugh Yeo, saaith that your depont being att supper with Mr. Hugh Yeo and William Yeo, sitting by Mr. Yeo at supper in company, yr depont saaith to Mr. Yeo that the young man, William Yeo, would doe him some kindness in a short time being he could write and cypher indifferently well etc." This was in 1679. See Accomac County Records, vol. 1678-82, p. 82.

## CHAPTER V

### The Old Field Schools

**P**ERHAPS the greatest proportion of the children who, during the Seventeenth century, received an education, obtained it in what came to be known at a later date as the Old Field School. Such a school was established at some spot in convenient reach of every boy and girl in a whole neighborhood. In order to ensure this, it was customary to build the schoolhouse in some old field, long abandoned to pine and broom-straw, which occupied a central situation; and here during the hours when the school session was not in progress, the building remained locked, vacant, and silent; but during the hours of instruction was filled with the murmur of recitation, and the confused sound of whispering tongues and shuffling feet. From the adjacent forest, there came in summer the voices of birds singing among the branches, and in winter the roar of the wind in the bare tree-tops. The whole scene was marked by the spirit of extreme remoteness and seclusion; and only the presence of the shouting and dancing children in the hours of play, or the smoke curling up from the chimney in the hours of work, gave it any apparent connection with the world of human beings.

But not all the houses in which the sessions of the

so-called old field schools were held were situated in such lonely spots.<sup>1</sup> In many cases, the schoolhouse was really the teacher's residence, and was surrounded by the ordinary plantation outbuildings, whether the cabins of servants and slaves, or the stables and barns; and there was contiguous a more or less open area of country under cultivation. The majority of the persons keeping these neighborhood schools were, throughout the Seventeenth century, perhaps drawn from the circle of the clergymen, who thus endeavored to increase their incomes; and the schools they presided over were, in most cases, established in their parsonages, which almost always occupied a central situation. There could hardly, in those times, have been found outside of great seats of learning, a class more competent to teach than these early Virginian clergymen. All were men who had been educated in English schools offering the greatest advantages for acquiring knowledge then presented among the English-speaking people; and a very large number, as we have seen, had carried off the highest honors in the foremost English colleges. They belonged to the very class of persons, who, in England, devoted a large part of their lives to equipping young men for their entrance into the Universities; and it was only natural that their parishioners in Virginia should turn to them as, of all the residents of the community, the ones best fitted by scholarship and the time at their disposal to conduct

<sup>1</sup> As the land attached to the court-house was generally situated very conveniently for the people of the county, a schoolhouse was frequently built on that ground. In 1694, for instance, we find the county court of Essex granting permission to John Peatle to erect a schoolhouse "on some part of ye county's land purchased for the new court-house"; see Orders July 10, 1694. Robert Leightonhouse, in 1695, occupied a schoolhouse situated at Yorktown.

schools for the benefit of the great body of children belonging to their congregations.<sup>1</sup> The case of Rev. Mr. Willson was not uncommon even as early as the middle of the century; in 1658, the planters of Elizabeth River parish employed him to teach their children; and in order to obtain for him a suitable schoolhouse, contracted to pay Mr. Thomas Edmunds annually one thousand pounds of tobacco for the use of his residence for that purpose. This fact shows the high value they attached to his services, for, in addition, they were at the expense of raising his salary.<sup>1</sup>

The readers who, from time to time, were appointed to fill the places of clergymen temporarily or permanently absent, very frequently performed the duties of teachers in the countryside schools. In the petition which Captain Hugh Campbell presented, in 1691, to the Governor and Council, after declaring that the people residing in certain districts of Isle of Wight, Nansemond, and Norfolk counties, lived at such a distance from a church that they were unable to attend public worship with regularity, he went on to recommend the appointment of persons, who, every Sunday, should read the prayers and a sermon at places convenient to the inhabitants of these districts. In order to add to the income to be derived from the large tracts of land which he proposed giving for the support of these persons, he urged that they should be licensed to teach school. The Governor and his advisers approved so heartily of the whole scheme that they instructed the justices of the three counties to promote it by every means in their power.<sup>2</sup>

<sup>1</sup> Lower Norfolk County Records, vol. 1656-66, pp. 180, 235; see also Lower Norfolk County Antiquary, vol. iii, p. 52.

<sup>2</sup> Norfolk County Records, vol. 1685-96, p. 173.

That the teachers in the schools of Virginia in these early times were not always persons who, failing in other pursuits, had taken advantage of the barest smattering of knowledge to earn a livelihood by giving lessons is shown by the precautions adopted at various periods to shut out all who were unable to furnish a satisfactory certificate of competency. One of the strictest of the requirements is to be found in the twenty-seventh clause of Howard's Instructions on his appointment: this clause provided that no teacher arriving from England should be allowed to follow his profession unless he could submit to the authorities a license granted him by the Bishop of London; and that, should he have come from some other quarter, then he must obtain the Governor's license before he would be permitted to open a school.<sup>1</sup> Nicholson received the like command on his appointment at the end of the century.<sup>2</sup> In 1686, Howard issued a general proclamation, in which all the school-masters residing in Virginia were warned that, should they fail to attend the General Court's next meeting at Jamestown in order to present testimonials of competency from their parishes' foremost citizens, then they were to be deprived of the right to give instruction. In addition to proof of learning and ability, they must show that they were upright and sober in their lives, and conformable in their religious opinions to the doctrines of the Church of England.<sup>3</sup> Many

<sup>1</sup> Colonial Entry Book, vol. 1685-90, pp. 34, 409.

<sup>2</sup> B. T. Va., vol. vii., p. 168.

<sup>3</sup> Howard, though instructed to summon the school-teachers to Jamestown, perhaps recognizing the difficulties in the way of their coming, deferred doing so until the Bishop of London offered a remonstrance. A copy of the Proclamation is recorded in several counties; see, for example, York County Records, vol. 1684-7,

of the teachers found it impossible to comply with this proclamation, owing to the distance to Jamestown and the smallness of their means. In a communication addressed to the Governor, the House of Burgesses informed him, with evident feeling, that, in consequence of these facts, "several knowing and skillful schoolmasters in their respective counties had left off their employments," and they, therefore, urged him to nominate in each county one or more fit persons to examine the qualifications possessed by the different teachers for the proper performance of their duties; and these persons should also be empowered to grant licenses to all schoolmasters whose competency was satisfactorily proven. The Governor seems to have readily assented to this suggestion.<sup>1</sup>

Nicholson, during his whole incumbency, evinced an extraordinary interest in whatever would increase the number and advance the usefulness of the schools. On several occasions, he offered assistance out of his private purse. When the new court-house erected at Jamestown to take the place of the old one destroyed at the time of the great Insurrection became so ruinous that the justices of James City were not willing to occupy it longer, he proposed to buy the building, and, after

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p. 212, Va. St. Libr. There was, in 1693, a proposition before the Committee of Propositions to the following effect: "No one shall . . . undertake the education of youth but such as are the professed members of the Church of England and subscribe the canons." The House concurred in this proposition, although remarking that the laws already enacted to assure the same result were sufficient for the purpose; see entry for Oct. 13, 14, 1693, *Minutes of House of Burgesses*, Colonial Entry Book, vol. 1682-95; see also *Minutes of Assembly* Nov. 4, 1686, Colonial Entry Book, vol. 1682-95, p. 354.

<sup>1</sup> *Minutes of Assembly* Nov. 4, 1686, Colonial Entry Book, 1682-95, p. 354; see also *Minutes of Assembly* Nov. 8, 1686.

putting it again in a state of perfect repair, to convert it into a schoolhouse "for the advantage" of the inhabitants of that county and other parts of the Colony, who should send their children thither to receive an education. Since the Governor and Council, in their character as the General Court, acceded to the county justices' request that they should be permitted to hold their sittings in the General Court-house, it is quite probable that Nicholson's proposition was accepted, and the school established.<sup>1</sup> In 1691, in order to assure further the success of Captain Hugh Campbell's plan for the appointment of readers in the remoter parts of Isle of Wight, Nansemond, and Norfolk counties, who should, in addition to their other duties, teach the parishioners' children, Nicholson very generously offered to devote to their remuneration the whole of that share of the marriage and tavern fees derived from these counties, to which he was entitled by law.<sup>2</sup> Captain Campbell's proposition seems to have made such a favorable impression on the Governor's mind that he urged that it should be given a wider scope by each parish contributing to the payment of its clerk or reader, as a special inducement to him to set up a school within its limits. This suggestion was evidently intended to apply only to those parishes in which no such school had been established by the clergyman or a professional teacher. One of the strongest reasons prompting this zealous and enlightened official to throw his influence in favor of the Act of Assembly authorizing the laying off of towns at different eligible points in the Colony, was that each of these towns would afford an ample support to a schoolmaster competent to give

<sup>1</sup> Minutes of Council, Feb. 18, 20, 1690, B. T. Va., 1690, No. 14.

<sup>2</sup> Norfolk County Records, Orders January 27, 1691.

at least a course in reading and writing.<sup>1</sup> Nor did Nicholson allow his absence from Virginia, even when he had no expectation of returning, to cool his interest in the education of its youth; in 1695, while he was acting as the Governor of Maryland, he conveyed to the justices of York county his lot in Yorktown for the use of Robert Leightenhouse, who was at this time the schoolmaster there; and should Leightenhouse cease to teach, or remove his residence to some other community, then the lot was to pass into his successor's occupation, should he be approved by the county court.<sup>2</sup>

The justices' intervention in this instance was only in conformity with the general supervision which they and their fellows exercised over all the schoolmasters. The county records show that the county court very frequently recommended to the Governor particular teachers whom they thought fully entitled to receive the license required; for instance, in 1699, the justices of Elizabeth City requested that officer to confer on Stephen Lylly the right to teach; and the same year they apparently made a similar request in Charles Goring's behalf. The latter was declared to be competent to instruct youth in reading, writing, and arithmetic; the former in writing and the English tongue.<sup>3</sup> It would seem that at this time (and this was also probably the case at earlier periods) the first step on a pedagogue's part towards opening a school was to petition the county court to obtain the necessary license from the Governor; and in order to justify the court in doing this, the applicant had to give proofs

<sup>1</sup> *Va. Maga. of Hist. and Biog.*, vol. vii., p. 157.

<sup>2</sup> *William and Mary College Quart.*, vol. ii., p. 17.

<sup>3</sup> Elizabeth City County Records, Orders Aug. 20, Sept. 18, 1699.



of his learning. The justices practically decided whether he should or should not be allowed to become a teacher, for if they found him incapable, they simply declined to recommend him to the Governor; and when they refused to recommend any one, it is not probable that that official bestowed the license in opposition to their decision. Indeed, the granting of licenses was a purely formal act on the Governor's part, as he, being called upon to make so many appointments of schoolmasters, was compelled to be guided by the recommendations of the county courts.

Every county court in Virginia was, about 1699, required to return to the Council Office at Jamestown a list of all the schools situated in its own jurisdiction; and also a statement as to whether the persons filling the position of teacher had obtained licenses or not. Should it be found that some were following this calling without having secured the necessary certificate, then they were to be granted such certificate without any charge, should an examination of their qualifications prove them to be fit and capable<sup>1</sup>; it was evidently the desire of the authorities from whom this order came that the advantage of retaining competent teachers, already busily occupied with their duties, should not be jeopardized by the imposition of any fee. Not infrequently, the county courts offered greater induce-

<sup>1</sup> Minutes of Council, June 21, 1699, B. T. Va., vol. liii. This order, which came from England, is preserved among the records of several counties; see Lancaster County Records, vol. 1696-1702, p. 84. In obedience to it, a report of a very interesting and valuable character must have been drawn up, but a diligent search among the records in Virginia and in the British State Paper Office has not so far enabled me to find it. The Virginia copies were probably destroyed in the burning of the General Court-house in Richmond at the evacuation in 1865.

ments still to draw schoolmasters within their respective jurisdictions; the action of the Henrico justices in 1686 was by no means exceptional; in the course of that year, they specially exempted Mr. Nathaniel Hall, who had recently removed from Gloucester county, from the payment of any taxes during a period of twelve months. This was always proof of an extraordinary solicitude to advance some purpose supposed to be unusually promotive of the community's welfare, as the relief of any one person from the levy simply increased the burden falling on the rest. The justices, in language worthy of the enlightened spirit animating them on this occasion, declared that they granted the privilege "for ye encouragement of learning and instruction of youth in this county by inviting able tutors here to reside."<sup>1</sup> It would appear, from the wording of this sentence, as if the policy followed, in Mr. Hall's case was not confined to him, but was intended to apply to every schoolmaster who settled in the county with the view of pursuing his calling there.

The strong sentiment prevailing in the Colony in favor of giving extraordinary encouragements to schoolmasters in order to increase their number and assure their contentment, was revealed by the smallness of the fee which they were expected to disburse in obtaining a license. At first, they seem to have been required to pay only a few pounds of tobacco, simply to compensate the Governor's clerk for his trouble in writing out the certificate; but during Howard's administration a fee of twenty shillings was imposed.<sup>2</sup> This was one of the numerous exactions of that sordid

<sup>1</sup> Henrico County Minute Book, 1682-1701, p. 149.

<sup>2</sup> Minutes of Assembly Nov. 8, 1686, Colonial Entry Book, vol. 1682-95; Beverley's *History of Virginia*, p. 77.

and grasping official in his determined effort to make his position enrich him to the utmost in the shortest period possible. So serious a charge upon a class of men whom the people of the Colony were anxious to encourage does not, however, appear to have been continued for any great length of time.

In the record of the settlement of estates, there are frequent references to large sums due schoolmasters for the instruction of children. In the greater number of these cases, the creditor was a professional teacher who had set up a neighborhood school. (Amongst the items of indebtedness of the Johnson property in York, in 1660, was one for the board and tuition of a member of the family amounting to one thousand and forty pounds of tobacco,<sup>1</sup> whilst the estate of Hugh Macmyal, of Henrico, in 1679, owed Mr. Everett two hundred pounds for a course of lessons given his son.<sup>2</sup>) In 1686, the executors of Edward Tanner, of Surry, were called upon to pay seven hundred pounds of tobacco to Mr. John Harris for the education of the testator's children.<sup>3</sup> In all these cases, the teacher had agreed with the parents to impart instruction at a stipulated rate. Such also seems to have been the rule with John Higgs, the principal schoolmaster of Accomac. Having, about 1679, obtained a schoolhouse on Mr. Macklannie's plantation, he arranged with his scholars' fathers for each to contribute twenty pounds of tobacco towards the payment of the rent. Among his patrons was Mr. John Abbott, who gave a note for eight hundred pounds of tobacco in consideration that his children's instruction should last from June, 1679,

<sup>1</sup> York County Records, vol. for 1660, p. 94, Va. St. Libr.

<sup>2</sup> Henrico County Records, vol. 1677-92, orig. p. 87.

<sup>3</sup> Surry County Records, vol. 1684-6, p. 83, Va. St. Libr.

to April, 1680. Unfortunately, Higgs found it impossible to secure a sufficient number of patrons to meet the cost of the house leased from Mr. Macklannie, and, in consequence, he was compelled to find a cheaper house elsewhere, but as it was remote, Mr. Abbott withdrew his children from Higgs's care, and the court decided that he was under no obligation to pay more than four hundred pounds of the amount of his note.<sup>1</sup>

Valentine Evans, a leading schoolmaster of York at this time, seems to have charged for each pupil at the annual rate of twenty shillings, or twenty-five dollars in modern values, (whilst Thomas Dalby, of Henrico, was allowed by the local court thirty shillings for the tuition of two youthful scholars during nine months.)<sup>2</sup> In 1698, the executor of a schoolmaster who had resided in Isle of Wight county presented bills for the amounts which sixteen persons owed the deceased for their children's instruction; the fee apparently for each pupil had been fifty pounds of tobacco for every quarter, or seventeen pounds for a single month, whilst for five months the fee seems to have been about eighty-three pounds. The total amount due came to as much as twenty-one hundred and thirty-nine pounds of that commodity.<sup>3</sup> The General Assembly, in 1691, ✓

<sup>1</sup> Accomac County Records, vol. 1678-82, pp. 143, 150.

<sup>2</sup> York County Records, vol. 1675-84, p. 598, Va. St. Libr.; Henrico County Minute Book, 1682-1701, p. 189, Va. St. Libr.

<sup>3</sup> The following is the list of the debts, which will be found in Isle of Wight County Records, vol. 1661-1719, p. 395:

Jno. Davis	dr for 3 months schooling	50 lbs.
Wm. Webb	dr " schooling	285 "
Widow Newman	dr " "	80 "
Richard Gray	dr " 5 months	83 "
Mr. Monger	dr " schooling	303 "
John Johnson	dr " 1 month	17 "
Wm. Balmer	dr " schooling	60 "



## CHAPTER VI

### Free Schools: Those Projected in the Time of the Company

NOT all the schools in Virginia during the Seventeenth century were private, and only to be attended after the payment of a fee. As was to be expected when the population's English origin was recalled, there were also several free grammar schools established and endowed by citizens of the Colony in that spirit of benevolence which, in these early times, was far from uncommon among English-speaking people. Some of the most useful of the smaller institutions of learning in the Mother Country had been founded by the generosity of her noble-minded sons, and from generation to generation had, with little charge to English youth, furnished the means of acquiring at least a primary education. There were among the persons emigrating to Virginia men who were animated by the same feeling of practical philanthropy; and had the Colony's different communities been as thickly inhabited as the English, which would have assured the success of a free school with far more certainty than the prevailing sparsity of the population, there is reason to think that the number of endowed grammar foundations would, in proportion to the number of its people, and the length

of time the country had been settled, been as great in Virginia as in England.

The earliest plan of a free school to be established in Virginia was designed for the benefit of Indian youth. In the month of February, 1619-20, some person, who refused to reveal his name, placed in the hands of Sir Edwin Sandys, the Treasurer of the London Company, a box containing a bag of new gold, which, when counted, was found to amount to five hundred and fifty pounds sterling, a sum with a purchasing power of nearly fourteen thousand dollars in our modern currency. A letter preceding this gift had expressed the anonymous benefactor's wish that five hundred pounds sterling should be used in instructing a "convenient number" of young Indians in the art of reading, and also in teaching them the principles of the Christian religion; beginning when they were seven years of age, they were to continue to be taught in the same manner up to their twelfth birthday; and after that, until they were twenty-one, they were to be carefully trained in some branch of handicraft. The remaining fifty pounds sterling of the sum presented was to be given to two trustworthy persons as compensation for their making a quarterly report to the Treasurer of the Company, to contain a detailed account of the execution of the purposes the benefactor had in view, as well as a full list of the names of the children enjoying the benefits of the gift.<sup>1</sup> In the following year, a complaint was heard that, although the money had been delivered to the patentees of Southampton Hundred, with directions to carry out the generous donor's instructions, yet so far the sum had been allowed to remain entirely

<sup>1</sup> Abstracts of Proceedings of Va. Co. [of London, vol. i., pp. 42, 44.

unemployed. The unknown philanthropist, when informed of this, expressed his willingness to increase his gift to one thousand pounds sterling, equal in value to twenty-five thousand dollars, provided that a certain number of male Indian children, having been sent for from Virginia, were entered among the scholars at Christ's Hospital. Should this proposition be thought by the Company to be impracticable, then he wished that the five hundred and fifty pounds sterling constituting his original gift should be expended in founding, within the boundaries of Southampton Hundred, a free school in which both English and Indian children might be educated. Sandys discouraged the employment of the money in either project. Indian boys, he said in substance, could not be easily brought to England; and should an effort be made to set up a free school in Virginia at that time, it would be impossible to obtain the workmen necessary for the erection of the buildings, except at a very heavy expense, owing to their unwillingness to abandon the cultivation of tobacco, which they considered the only profitable occupation. Under these circumstances, the treasure designed to be devoted to the erection of the school-house would be sufficient merely to raise a "small fabrick," instead of "accomplishing such a foundation as would satisfy men's expectations."

Martin's Hundred having declined to accept the gift, the patentees of Southampton Hundred finally decided to make use of it in a way that would indirectly promote the object the philanthropist originally had in view. Having increased the amount by adding to it a contribution from their own treasury, they determined to invest the entire sum in the erection of iron works, with the ulterior purpose of devoting the profits of the



venture to the education of thirty Indian children. The managers of the Hundred, writing to Governor Yeardley, who occupied the post of its Captain, urged him to push the enterprise with great energy, as it was one "whereon the eyes of God, angels, and men were fixed." Yeardley, replying, declared that the Indian children whom it was proposed to instruct could only be obtained through a formal treaty with Opechancanough; and this he intended making the ensuing summer. Mr. Bluet, the foreman of the band of workmen sent out to the Colony to build the furnace, died, and the scheme, in consequence, received a severe setback. A new batch of mechanics having been dispatched, the work was resumed with such success that Sandys was able to express to the donor of the fund the hope that he would soon be fully satisfied by the "faithful account which the Company would be able at all times to give of the trust." But the great massacre of 1622 followed almost immediately, and falling with terrible suddenness on the little settlement around the new iron works (situated on Falling Creek, in the modern county of Chesterfield), destroyed the furnace, and utterly and finally dissipated the capital, which had, with such persistent benevolence, been sought to be used for the establishment of the first free school designed for the Indians' benefit.<sup>1</sup>

The first free foundation designed for the benefit of the Colony's white children exclusively seems to have been the one known as the East India School, which had its origin in a subscription taken up among the passengers and mariners on board the *Royal James* while returning from the Indies. At the Cape of Good Hope, that ship had met a number of vessels outward

<sup>1</sup> Abstracts of Proceedings of Va. Co. of London, vol. i., p. 163.

bound, and as they had given a good report of Virginia's prosperity, Rev. Mr. Copeland, the chaplain of the *Royal James*, induced the ship's company to contribute over seventy pounds sterling for the promotion of some benevolent work in the Colony. At first, it was undecided as to whether this should take the form of a church or a school, but it was in the end determined that a school should be established. Copeland, writing to numerous friends residing in India, urged them to make a liberal gift of money for the advancement of so excellent a scheme. In addition to the large sum subscribed by the passengers and mariners of the *Royal James*, there were specific presents of thirty pounds and ~~twenty pounds~~ sterling respectively from two benefactors, who refused to disclose their identity.<sup>1</sup> The London Company gave the name of "East India School" to the proposed institution as a mark of their appreciation of the zeal of the East India Company's officers in starting the project; and it was their design that this new school should become an adjunct to the college which they proposed erecting at Henrico.<sup>2</sup>

25  
1822  
meeting of the

In the spring of 1622, Leonard Hudson, a skilled architect and carpenter, who was to build the school-house, accompanied by his wife and five apprentices, left England in the *Abigail*, under Captain Barwick's command, and appears to have arrived safely in Virginia.<sup>3</sup> Steps had already been taken by the Company

<sup>1</sup> *Works of Captain John Smith*, p. 60, Richmond edition; *Abstracts of Proceedings of Va. Co. of London*, vol. i., pp. 146, 148; *Randolph MS.*, vol. iii., p. 167.

<sup>2</sup> *Abstracts of Proceedings of Va. Co. of London*, vol. i., pp. 146-8; *Campbell's History of Virginia*, p. 158.

<sup>3</sup> *Works of Captain John Smith*, vol. ii., p. 65, Richmond edition; *Randolph MS.*, vol. iii., p. 169.

Rabby  
College

✓ to choose the persons upon whom should devolve the immediate control and direction of the school's affairs,—Rev. Mr. Copeland was appointed the rector, and Mr. Dike, the usher or master. Mr. Dike had, some time previous to February 1621-2, been warmly recommended as a teacher well equipped to fill the place; but the Company required him to obtain also a certificate from the Governor of Virginia (to whom he seems to have been known) that he was both competent and diligent in his calling. He was now in England, and the Company informed him that, should he be able to procure an expert writer to go out with him, who would be able to give instruction in the rudiments of arithmetic, they would bear the whole expense of his transportation to the Colony. The term during which Dike was to occupy the mastership of the East India School was to continue for five years; and apparently in addition to his salary, he was to receive at once a patent to one hundred acres of land. As a further encouragement, the Company promised to supply him with all the books which he would require in following his calling in Virginia; whatever ones the scholars in his charge would need were also to be furnished by the Company; but for these last, the children's parents were expected to make payment.<sup>1</sup> It was probably to the East India School that William Whitehead, of London, in December, 1622, bequeathed twenty pounds sterling, provided that an aunt, whom he named in his will,

<sup>1</sup> Abstracts of Proceedings of Va. Co. of London, vol. i., p. 167; see entry for Febry. 27, 1621-2. At the end of his term of service, Dike was to receive 500 acres of land in addition. Dike probably never went over. Writing June 10, 1622, some months after the massacre, the Company stated that "they did not send an usher because they desire that the Colony may choose the schoolmaster and usher, if any there"; see Randolph MS., vol. iii., p. 169.

died before him, and also that the school had been built within the first three years following his decease; should it not have been built within that time, the sum was to be spent in erecting a church on a site somewhere within the boundaries of Martin's Hundred.<sup>1</sup>

A site for the East India School was chosen in Charles City; but the great massacre of 1622 brought the whole scheme, which promised so much usefulness, to an abrupt end. A few years afterwards (1625), the Governor and Council, in a letter to the English Lords Commissioners, expressed a decided opinion that the school "would come to nothing."<sup>2</sup> There is no proof that the project was revived with energy after the terrible catastrophe of the massacre; and the prediction of these officers was, by the course of subsequent events, shown to be only too correct. The havoc worked by that catastrophe was, apart from the frightful loss of life accompanying it, in no respect a greater cause for sorrow than in the destruction it precipitated on this well-considered scheme for the establishment of an important free school in the heart of Virginia; such a school would not only, as time passed on, have conferred the inestimable blessing of free tuition on many thousands, but also have set an example of private benefaction, which, on account of the success attending its practical operation, would have been imitated by a great number of persons anxious to advance the cause of education in the Colony's various communities.

<sup>1</sup> See Will, Waters's *Gleanings*, vol. ii., p. 1028. It is possible that Whitehead's bequest was intended for the school which a previous unknown benefactor had proposed founding in Virginia by an expenditure of five hundred pounds sterling.

<sup>2</sup> Randolph MS., vol. iii., p. 192.

## CHAPTER VII

### Free Schools: The Symmes and Eaton

AS it was, the plan of the East India School very probably influenced Benjamin Symmes, about twelve years after the proposed institution had come to naught, to establish an endowed free school in Virginia. Symmes was born in 1590; and, in 1623, the year following the great massacre, so fatal to the East India and other benevolent schemes, he is found residing at Bass' Choice, situated in the modern county of Isle of Wight. As his will leaving valuable property for the support of the free school projected by the same document, bore the date of February 1634-5, his bequest precedes by several years the Rev. John Harvard's far more famous gift, which became the corner-stone of Harvard College. In reality, we are indebted to Benjamin Symmes for the earliest foundation for free education made in English America by a citizen of an English colony; and for that reason, his name is entitled to extraordinary honor in a land where the free school system has been carried to the highest state of usefulness perhaps to be observed on the globe. His school was established in the same thoughtful spirit and partook of the same lofty purposes as that noble group of endowed schools, which had, in the course of many centuries, been

erected in the Mother Country by private generosity and benevolence,—the ever running fountain heads from which the members of generation after generation had drunk deeply of the enlightening and elevating waters of knowledge. There was not a single shire in England lacking one of these fine grammar schools; indeed, there was hardly an important town or a series of parishes unprovided with such an institution.<sup>1</sup> But for all those melancholy influences following upon the great economic, political, and social changes Virginia has passed through, the free school established by Symmes would be to-day equal in its record of usefulness, reaching back beyond the middle of the Seventeenth century, to those similar foundations in England which have been preserved in their original vigor by the happier conditions that have prevailed in that more stable land.

By the provisions of Symmes's will, the income from two hundred acres of land belonging to his estate, and the proceeds from the sale of the milk and of the increase of eight cows forming a part of his personality, were to be expended in affording a free education to the children residing in the parishes of Elizabeth City and Kikotan, from a point beginning at Mary's Mount and reaching as far as Poquoson River. This area of country was situated within the boundaries of Elizabeth City county. A schoolhouse was to be erected with the first money derived from the bequest; but all the profits accruing subsequently were to be devoted to the

<sup>1</sup> At the time of the Reformation, the English schools consisted of grammar, cathedral, college, monastery, hospital, guild, and independent schools. Most of these not only survived that great event, but also attained to an unexampled prosperity under its transmitted influence.

founder's general design. In March, 1642-3, about eight years after the date of the will, the General Assembly thought it necessary to pass a special Act in order that this design might be carried out in the strictest conformity with Symmes's directions; they recognized his "godly disposition and good intent"; and expressed their determination to enforce his wishes to the letter, as an encouragement to other citizens to follow the noble example which he had set. The whole phraseology of this memorable Act reveals the high appreciation of education prevailing in Virginia in these early times, and the gratitude felt for every benefaction looking to its advancement. By the end of 1647, the school seems to have been resting on a firm foundation, and was in active operation; the schoolhouse was now finished; and the means of meeting every expense was assured by the income obtained from the land and a herd of forty milch cows. The institution was still in existence in 1694, in which year Robert Croke, the master, received two cows to compensate him for his outlay in repairing the school building. In November, 1699, he gave notice that he would resign his office at the "next fall of the leaf," and Samuel Snignell promptly petitioned the justices of the county court to appoint him Croke's successor; and in doing so, declared his readiness to "undertake ye education of ye children according to the design of the donor." The court seems to have thought favorably of his qualifications, for they chose him to fill the position as soon as it was vacant; which, it would appear, would not occur until the autumn of 1700. It is to be inferred from the contents of the order naming Snignell that the school's endowment had suffered no diminution; the land had remained intact;

and the livestock had very probably steadily increased since 1647, at which date, the herd of cows was five times larger than it had been in 1635, when the bequest was first announced. The only limit to the increase in the size of this herd was fixed by the area of ground reservable for their pasturage. The management of the whole property seems to have devolved on the school-master, acting under the general supervision of the county court.<sup>1</sup>

The example set by Benjamin Symmes was, as anticipated by the General Assembly, soon followed by another citizen residing in the same county, who entertained the same enlarged views, and was animated by the same philanthropic spirit. This was Thomas Eaton, a physician, who, after living many years in Virginia, returned to England, where he seems to have died. As early as 1634, he had acquired a patent to about two hundred and fifty acres lying at the head of Back River, a stream entering the Chesapeake Bay a few miles below the mouth of the Poquoson.<sup>2</sup> The free school established by him was designed for the children of parents whose homes were situated within the boundaries of Elizabeth City county. Its original endowment greatly exceeded in value that of the Symmes Free School; this endowment consisted of an estate of five hundred acres of land in an improved agricultural condition and stocked with two negroes, twelve cows, two bulls, and twenty hogs. That there was a substantial residence on the plantation is shown

<sup>1</sup> For an account of Symmes's Free School, see Hening's *Statutes*, vol. i., p. 252; *William and Mary College Quart.*, vol. vi., p. 73; Elizabeth City County Records, Orders Nov. 20, 1693.

<sup>2</sup> *William and Mary College Quart.*, vol. vi., p. 72.



by the large quantity of household furnitur<sup>at</sup> included in the bequest.

The Eaton Free School was under the control of a board of trustees composed of the clergyman and churchwardens of the parish and the justices of the county court. This body was impowered to appoint a master, who, like the master of the Symmes Free School, doubtless served as the active manager.<sup>1</sup> The person in charge about 1691 was Ebenezer Taylor. As he enjoyed all the income and perquisites of the school, which were probably considerable, the county court, in 1692, required him to provide the necessary clothing for an old female slave forming a part of the endowment, whom he had so grossly neglected that the court described her as being almost naked. By the terms of the justices' order, he was to deliver to Mr. Henry Royall, one of the feoffees, for her use, one new cotton waistcoat, one petticoat, two yards of new canvas for a dress, one pair of new shoes and stockings, and three barrels of Indian corn. A few years later, this ancient negress was, by a second order of court, permitted to keep for her own support whatever corn and tobacco she should be able to produce by her own labor.<sup>2</sup> In addition to the money obtained from the sale of the different crops, and also of the increase of the herds of cows and hogs, there seems to have been some income derived from the sale of the fine timber growing on certain parts of the land; in 1694, Walter Bayley was authorized to cut down a portion of this

<sup>1</sup> *William and Mary College Quart.*, vol. xi., p. 20. The following item appears in the Elizabeth City county levy for Nov. 28, 1692: "To ye Secretary's office 3 patents of Eaton's land, 120 lbs. tobo."

<sup>2</sup> Elizabeth City County Records, vol. 1684-99, p. 118, Va. St. Libr.; see also Orders Dec. 19, 1692.

timber in order to use it in making a dam, and, no doubt, had to pay for the quantity which he thus employed.<sup>1</sup> In 1699, a part of the tract was conveyed to William Williams<sup>2</sup>; and in the course of the following year, one of the negroes belonging to the estate was by Captain Henry Jenkins, probably a trustee of the school, sent out to Barbadoes, and there disposed of, perhaps because he was considered to be too vicious to be allowed to remain in Virginia.<sup>3</sup>

In 1697, George Eland, who seems to have been a physician by profession, was appointed by the trustees to the mastership of the school; and his term was to be renewed from year to year so long as they approved his management. In return for teaching all the children residing within the boundaries of Elizabeth City county, he was to receive the several profits to be derived from the endowment.<sup>4</sup>

The Symmes and Eaton Free Schools were beyond question the most useful institutions of that character situated in the Colony during the Seventeenth century. They both possessed the income they needed to furnish tuition without expense to a certain number of pupils; they were both subject to the supervision of the ablest, the most experienced, and the most responsible body of men in their several communities; and they each had a trained master in charge throughout the whole time of their existence. What was the extent of the instruction which they gave? We are informed that the master of the Eaton School was required to teach "English and grammar," which undoubtedly meant that

<sup>1</sup> Elizabeth City County Records, Orders Nov. 19, 1694.

<sup>2</sup> *Ibid.*, Orders June 19, 1699.

<sup>3</sup> *Ibid.*, Orders Aug. 20, 1699.

<sup>4</sup> *Ibid.*, Orders Nov. 18, 1697, Jany. 18, 1697-8.

the tuition was not confined to English studies, but that lessons in Latin, as in the private schools, were a part of the course. It would be inferred from the fact that "grammar" was taught that this course was carried beyond the mere rudiments of reading, writing, and arithmetic, and that an effort was made to impart an education equal to what is now to be obtained in the higher grades of the public schools. A similar tuition was, no doubt, given in the Symmes Free School. The endowment of neither institution seems to have been swelled, as time passed, by gifts from persons interested in the objects they were founded for; they were forced to rely on their original funds; and these evidently did not permit of their widening their field of usefulness by increasing the number of teachers and extending the course of study. Had the two schools been consolidated in the Seventeenth century, and had their common endowment been added to by the liberality of philanthropic citizens, they would have rendered unnecessary the establishment of William and Mary College at a later date, because, by the enlargement of their scope of instruction, which would have followed their union, they would have met the want in which that institution had its birth.<sup>1</sup>

✓ <sup>1</sup> The two schools existed until 1805, when they were incorporated in one as the Hampton Academy. In 1852, the fund amounted to \$10,000 and is still preserved apart from the state school fund. A portion was used in 1902, to erect in Hampton a handsome Academy building, which is known as the Symmes-Eaton Academy and is a part of the public school system.

## CHAPTER VIII

### Other Free Schools

THESE were not the only free schools in Virginia during the Seventeenth century; numerous others were projected, of which several at least were put in actual operation. As early as 1652, the county court of Northumberland gave their official approval to a petition offered by Hugh Lee, one of their number, which contained a well considered proposition looking to the establishment, at his own expense, of a free school in that county.<sup>1</sup> Only three years afterwards, John Moon, a citizen of Isle of Wight county, instructed his executors, in settling his estate, to reserve four female cattle, and to devote the income to be obtained from the sale of their male increase, as well as from the sale of the cows as they grew old, to meeting all the costs of providing a designated number of orphan children with an education, and "the like necessities." It does not appear to have been the benefactor's purpose to set up a free school, but rather, in some free school already established, to furnish tuition to certain deserving pupils, who were too indigent to pay the ordinary fees.<sup>2</sup> In a similar spirit, Richard Russell, a zealous Quaker, whose home was situated in Lower Norfolk, bequeathed a portion of his estate

<sup>1</sup> Northumberland County Records, Orders Jany. 20, 1652.

<sup>2</sup> Isle of Wight County Deeds and Wills for 1655.

for the education of six children of impoverished parents residing near Elizabeth River; and if six more should present themselves, then a second portion of his estate was to be set apart for affording them the like tuition; and so on, so far as his property would go before being exhausted. In the case of this bequest, as of John Moon's, the testator's intention was apparently to supply the means of meeting the charge for instruction in a school already in existence.<sup>1</sup>

In 1668, Mr. King devised a tract of land, containing about one hundred acres, to the parish in which he resided, for the foundation and maintenance of a free school.<sup>2</sup> About seven years afterwards Henry Peasley left a large amount of property, consisting chiefly of a plantation covering six hundred acres, ten cows, and a breeding mare, for the endowment of a similar school projected by him for the benefit of Ware and Abingdon parishes in Gloucester county.<sup>3</sup> In the course of 1675, Francis Pritchard, of Lancaster, bequeathed a large amount for the like purpose provided that there was a failure of heirs to his estate in certain lines, which he designated in his will.<sup>4</sup> At the end of the next decade, William Gordon, of Middlesex, presented one hundred acres of valuable land as an endowment for a free school; and with the proceeds obtained from the sale of the crops of this plantation, a schoolhouse was soon erected, and a regular teacher employed, who, for some years, gave instruction, without expense, to the children in attendance.<sup>5</sup>

<sup>1</sup> Lower Norfolk County Records, vol. 1666-75, p. 282.

<sup>2</sup> *William and Mary College Quart.*, vol. v., p. 113.

<sup>3</sup> *Ibid.*, vol. vi., p. 82.

<sup>4</sup> Lancaster County Records, vol. 1674-89, pp. 67-9.

<sup>5</sup> *William and Mary College Quart.*, vol. vi., p. 8.

There is reason to think that there were other similar institutions in operation in Virginia during the same period. It is only through the surviving county records that the fact of the existence of the minor free schools known to us has been preserved; unfortunately, the great bulk of these records, especially for many of the oldest counties, where such institutions were most likely to have been established, owing to their greater wealth and population, have been destroyed by the vicissitudes of various wars; and with them, all evidence that these counties once contained endowed schools of the character referred to, has been swept away. In his history, in which he described the Colony's condition in the century's closing years, Beverley informs us that there were

tracts of land, houses, and other things granted to free schools for the education of children in many parts of the country; and some of these are so large that of themselves they are a handsome maintenance to a master; but the additional allowance which gentlemen give with their sons render them a comfortable subsistence. These schools have been founded by the legacies of well inclined gentlemen. . . . In all other places, where such endowments have not been already made, the people join and build schools for their children, where they may learn on very easy terms.<sup>1</sup>

The author of these sentences, a man thoroughly familiar with every feature of Virginia at the time he was writing, would hardly have used so broad an expression as "in many parts of the country" had the number of free schools been limited to four or five. The scope of that expression would be fully intelligible to us, had all the records of all the counties

<sup>1</sup> Beverley's *History of Virginia*, p. 224.

survived to reveal to us what that number really was.

When Berkeley, in reply to the interrogatories of the English Commissioners in 1671, thanked "God that there were no free schools in Virginia,"<sup>1</sup> he made a statement which had no foundation in fact. The assertion seems especially preposterous as coming from a man who, at the moment he penned it, was in less than a day's journey of at least one county in which two free schools, the Symmes and the Eaton, were in active operation and assured of a permanent support by substantial and profitable endowment funds. Not only was Elizabeth City in possession of two free schools, but, as we have seen, at least two schoolmasters applied, in the course of a single year, for licenses to teach in private schools situated in that county. Berkeley's untruthful averment probably had its origin in a desire to impress at all costs the English authorities with his excessive loyalty to King and Church. "Learning," he continued, "had brought disobedience and heresy and sects into the world." The violence, which fell little short of the paroxysms of insanity, exhibited by him as soon as Bacon's followers had finally submitted, was foreshadowed in this foolish utterance, so often and so unjustly used to reflect upon the spirit animating the Virginian people during the Seventeenth century in their attitude towards education. These words, written only four years before Bacon took up arms in behalf of an oppressed people, must have made a singular impression on the minds of even the second Charles's advisers, who, with all their reactionary tendencies, looked upon the endowed schools of England as among the noblest foundations of their country. Charles himself in

<sup>1</sup> Hening's *Statutes*, vol. ii., p. 517.

reading them might well have anticipated the use of that strong expression which he applied to the monstrous old man when he heard of his wild course towards the unfortunate leaders of the rebellion.<sup>1</sup> They came with a particularly bad grace from Berkeley, who had enjoyed all the advantages of the highest education which that age afforded, and who, in early life, had won some notable triumphs as an English playwright; and they seem all the more remarkable when it is recalled that only eleven years before, he had shown extraordinary activity in his efforts to secure the establishment of a seat of learning in the Colony to partake of the joint character of a college and a free school. If he belittled the existing free schools so far as not to consider them schools at all because falling so much below the standards of similar institutions in England, then he evinced a spirit in this one matter evinced by him in no other relating to the favorable reputation of Virginia. Having occupied his office for a longer period than any one of his predecessors, he had become identified with the country to a degree not observed in any of the previous Governors; and his ordinary disposition was to exaggerate and not to underrate whatever would redound to its advantage, because he regarded it with all the affection and interest of a permanent resident. Only some perverted view closely approaching the inconsequence of dotage could have made him believe that the Colony's credit required him thus to ignore the existence of at least two free schools, which were important enough to have engaged at different times the General Assembly's attention.

<sup>1</sup> "The old fool has killed more people in that naked country than I have done for the murder of my father."



## CHAPTER IX

### Higher Institutions: The Indian College

WHAT attempt was made during the Seventeenth century to establish in Virginia seats of learning where a higher grade of instruction might be given than that received in the private and in the free schools? It was not many years after the first settlement of the Colony that active steps were taken to found a college; this was primarily designed for the education of Indian youth in the Christian faith; but it was also intended to furnish the planters' children with an opportunity to obtain advanced tuition.<sup>1</sup> The funds with which this institution was to be erected, and afterwards supported, were in part collected by means of the letters-patent ordered by James I, in 1617, to be issued throughout the Kingdom for the purpose of securing individual contributions. At a meeting of the General Court of the Company, held in May, 1619, it was announced that fifteen hundred pounds sterling, equal to thirty-five thousand dollars in purchasing power, had been received; and of this sum eight hundred pounds was in the form of actual money, and the remainder in the form of the Company's stock, purchased or transferred, it would appear, to pro-

<sup>1</sup> Stith's *History of Virginia*, p. 163, London edition.

mote so laudable an object. It was reported at the same meeting that there was a very fair prospect that a large addition would be made to this fund, for at least one among the bishops, whose aid had been solicited, had sent word that, just as soon as the royal warrant should be placed in his hands, he would exert himself to induce the people residing within the boundaries of his diocese to contribute liberally to it.

The Treasurer of the Company, on the same occasion, expressed the opinion that it would be unwise to use in building the College the sum already collected, but rather that it should be safely invested, and the interest accruing therefrom, as soon as it had sufficiently accumulated, alone employed for that purpose. In the same spirit of prudence, he also urged that a large area of fertile land situated at Henrico should be reserved for the institution's advancement; and in order to make this land productive as soon as possible, he recommended that fifty tenants should be dispatched thither to bring it into a state of profitable tillage. One half of the income thus acquired should be permitted to remain in the hands of the tenants themselves as compensation for their care and labor, while the other half should be reserved as a fund for pushing forward the College's general work, and maintaining the tutors and scholars.<sup>1</sup>

So much at heart did the Company have the foundation of the College that, in the fundamental orders and constitutions adopted in 1619 and 1620, there

<sup>1</sup> Abstracts of Proceedings of Va. Co. of London, vol. i., p. 6. Smith states that the site of the College was twenty miles from Henrico; it lay about five miles from Pierce's plantation on the Appomattox River; *Works of Captain John Smith*, vol. ii., p. 75, Richmond edition.

was inserted a clause requiring the annual appointment of a carefully selected commission, composed of five or seven persons, who were expected to take under their charge all the business relating to the establishment of the institution. This commission was instructed to adopt measures for the early collection of the different sums subscribed for carrying out this great work; and also to consult together as to the plans it would be wisest to follow in pushing that work to a finish. The Treasurer was ordered to keep separate accounts of the college funds, and from time to time to make special reports respecting them to the auditors, and through the auditors, to the General Court of the Company. These various provisions show, not only the extraordinary interest which this body took in the proposed seat of learning, but also the practical manner in which they endeavored to ensure its early and successful inauguration.<sup>1</sup>

The noble purposes to be subserved by the projected college induced several benevolent persons in England to contribute to its endowment by gifts either of money or of sacred objects. Nicholas Ferrer bequeathed to it three hundred pounds sterling, to be paid just as soon as ten Indian children had begun to receive tuition under its care.<sup>2</sup> In the course of the same year,

<sup>1</sup> Orders and Constitutions, 1619, 1620, p. 24, Force's *Hist. Tracts*, vol. iii.

<sup>2</sup> Broadside, 1619, Doct. 46, British Colonial Papers, vol. i. Until the College was in a position to give such instruction, twenty-four pounds sterling, by Ferrer's directions, were to be annually distributed among "three discreet and godly young men in the Colony to bring up three wild young Indians in some good course of life"; see *Works of Captain John Smith*, vol. ii., p. 40, Richmond edition. Twenty years afterwards, in order to secure the benefit of this clause of Ferrer's will, Mr. George Menifie presented to the General Court "an Indian boy of the county of Rappahannock"

some person, who refused to disclose his name, presented "fair plate and other rich ornaments" for a communion table designed for the college chapel<sup>1</sup>; and in the following year, a second person, who also concealed his identity, bestowed "many excellent religious books," and also a very curious and rare map of that part of America lying along the Atlantic coast. The example of these benefactors was followed by Rev. Thomas Bargrave, who, from having held a living in the Colony, was so much interested in the College's advancement, that, when he died, he bequeathed it a collection of volumes valued at one hundred marks.<sup>2</sup> Among the works forming a part of its library were one of St. Augustine's treatises translated into English, and the writings of Dr. Perkins, a distinguished clergyman of that day, of strong Calvinistic principles.<sup>3</sup>

The income to support the institution after the buildings had been finished was to be derived from four sources: first, the proceeds of the labor of the tenants to be assigned to the College lands; secondly, the amounts to be paid for the support of the pupils

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who had been baptized, and for ten years had been educated among the English colonists by Captain William Parry and Mr. Menifie. The boy was examined and found to be well informed as to the doctrines of the Christian religion, and he had also been taught how to read and write. "For his better supportation in the education of the said Indian boy," Menifie petitioned the court for a certificate testifying to the preceding facts. The Governor and Council, "approving and commending the care that had been used towards this youth," readily recommended Menifie's "suit for the £8 per annum part of the £24 towards the maintenance of said youth"; General Court Orders for 1640, Robinson Transcripts, p. 31.

<sup>1</sup> Broadside, 1619, Doct. 46, British Colonial Papers, vol. i.

<sup>2</sup> *Works of Captain John Smith*, vol. ii., p. 60, Richmond edition.

<sup>3</sup> Abstracts of Proceedings of Va. Co. of London, vol. i., p. 94.

capturing the endowed scholarships and fellowships offered by the East India School<sup>1</sup>; thirdly, the interest from the College fund when invested by the Treasurer of the Company; and, finally, the tuition fees of such of the planters' children as would, in the course of each year, attend. By 1620, the money already collected by popular subscription had, no doubt, been put into a shape that would annually bring in a large sum; and by this time also, the College lands, spreading over ten thousand acres, had been carefully laid off, and one hundred tenants sent out to till them.<sup>2</sup> This ground, which was probably as fertile as any in Virginia, seems to have been, in some part at least, situated on the south side of the James River; but the far greater part lay on the north side of that stream, beginning at Henrico and running thence towards the Falls.<sup>3</sup> In more recent times, many estates widely celebrated for their productiveness have been carved out of this noble domain, and it has always formed one of the most valuable areas of its extent in that division of country. At the date when reserved by the Company for the use of a seat of learning, it was still in its primæval condition, but as the Colony's population increased, every acre of its surface was sure to come

<sup>1</sup> *William and Mary College Quart.*, vol. vi., p. 71.

<sup>2</sup> Abstracts of Proceedings of Va. Co. of London, vol. i., p. 66.

<sup>3</sup> *Va. Maga. of Hist. and Biog.*, vol. ii., p. 159; Brown's *First Republic*, p. 322; Randolph MS., vol. iii., p. 180. In the "Patentees of Land in Virginia" it is stated that the University was assigned 10,000 acres on the northern side of the River (see MacDonald Papers, vol. i., pp. 295, 307). It also speaks of "other lands belonging to the College." As we shall see later on, the "College Plantation" was situated in the Surry county of that day, and this was no doubt a part of the "other lands" referred to. Besides, Coxendale seems to have been embraced in the grant; see Brown's *First Republic*, p. 322.

under cultivation, to the extraordinary profit of whoever should be entitled to the proceeds. A large proportion of the soil lay in the immediate valley of the river, and thus possessed, not only the extreme fertility of bottom lands, but also all those facilities for the transportation of crops furnished by the proximity of deep water. By itself alone, this great tract made up a vast endowment worthy of the memorable scheme it was designed to advance,—an endowment not exposed to those different vicissitudes which are so often destructive of mere personality. Time could not obliterate that form of property; it would only add to its value. Whatever fertility cultivation would take away, the muddy waters of the stream, in the periodic freshets, would quickly restore.

As if to give an additional assurance of success to a scheme offering such excellent prospects of a permanent income, the Company, in 1620, dispatched to Virginia George Thorpe, a member of the King's Privy Chamber, and a man distinguished for zealous piety and fine scholarship, with a commission to take charge of the affairs of the projected institution. In order to afford him and those who should follow him a support, without any need of paying them regular salaries, an area of land covering three hundred acres, with ten tenants to cultivate it, was assigned in perpetuity to the office of manager.<sup>1</sup> In 1619, the General Assembly had urged the Company to send out the mechanics of various kinds who would be required to erect the buildings<sup>2</sup>; it was probably

<sup>1</sup> Abstracts of Proceedings of Va. Co. of London, vol. i., pp. 12, 54, 63.

<sup>2</sup> *Colonial Records of Virginia*, State Senate Doct., Extra, 1874, p. 16. The College had no burgess in the Assembly of 1619, but ten years later, the "plantation at the College" was represented

the men dispatched in response to this earnest appeal who, some time previous to 1622, contracted with Thorpe to supply the bricks for the main structure.<sup>1</sup> But whatever steps had been taken towards the actual construction of the college were brought to a sudden and terrible halt by the bloody catastrophe occurring in the March of that year; seventeen persons residing on the College lands perished in that frightful episode<sup>2</sup>; and among them was Thorpe himself, whose extraordinary efforts for the Indians' conversion did not save him from the fatal stroke of the tomahawk. His death was a severe blow to the great scheme which he was so deeply interested in; for not only had the undertaking lost a most capable and indefatigable head, but the whole immediate community in which that undertaking was to be pressed to a complete consummation was thoroughly disorganized, although not dispersed, by the success of the Indian plot.

The Company refused to yield to a feeling of discouragement. In May, 1623, thirteen months after the massacre took place, there were still attached to the College lands numerous persons who had survived the Indian assault.<sup>3</sup> The Company now gave strict instructions as to what these remaining tenants should do for their holdings' improvement, and also as to the amount of rent which each should pay; for instance, they were required to erect substantial dwelling houses, to plant orchards, and to lay off gardens; and in return for the use of the soil, were expected,

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by Lieut. Thomas Osborne and Matthew Edlowe; see Hening's *Statutes*, vol. i., p. 138.

<sup>1</sup> Neill's *Virginia Company of London*, p. 330.

<sup>2</sup> *Works of Captain John Smith*, vol. ii., p. 75, Richmond edition.

<sup>3</sup> Abstracts of Proceedings of Va. Co. of London, vol. ii., p. 189.

in addition to working six days for the public benefit, to deliver to the public store annually one pound of silk, twenty bushels of corn, and sixty pounds of tobacco.<sup>1</sup> Above all, the Company ordered the Governor and Council to see that the bricklayers engaged by Thorpe to construct the College building should be compelled to go on and carry out their contract.<sup>2</sup> "The work, by the assistance of God, shall again proceed," the Company proudly declared when unjustly reflected upon by the faction led by Alderman Johnson and others<sup>3</sup>; and the energetic steps taken by this body almost immediately after the massacre show that these words were not spoken in idleness. But an event far more blighting to the College's prospects than that great catastrophe was now impending; this was the revocation of the Company's charter, which was finally consummated only a year after their noble resolve was pronounced. But for that revocation, the Company would, without doubt, have pressed the scheme to the completion so carefully and prudently provided for. The massacre had not diminished the College's endowment; the fertile lands still remained untouched, and only needed a new supply of laborers to afford the entire amount of income justly expected of them; the large fund collected by individual subscriptions, the additional sums bequeathed by benevolent testators, all were still intact. The devoted manager, Thorpe, had fallen, it is true, but it was not impossible to fill his place by the appointment of some one equally

<sup>1</sup> Randolph MS., vol. iii., p. 170.

<sup>2</sup> Neill's *Va. Co. of London*, p. 330.

<sup>3</sup> These words appear in the Company's reply to the petition of Alderman Johnson.



✓ pious, equally zealous, and equally efficient. Had the Company's letters-patent not been recalled, the College, before the end of a decade, under the influence of that body's direct and energetic supervision, would have been placed on a lasting foundation. The original plan of making the education of the Indians its primary object would have been rejected altogether in consequence of the massacre, and the institution would have stood forth as the earliest of all the seats of learning established on the American Continent for the benefit of the transplanted English. It would, in all probability, have survived to the present day in sufficient vigor to acquire a new growth of prosperity under the influence of the more fortunate conditions now beginning to prevail,—conditions certain to expand to an even more extraordinary degree in the future. Virginia, in such an institution, would have possessed a foundation that would have been clothed with the deeply romantic interest thrown around the colleges of the Old World by the beautifying touch of time, and by the glorious achievements of their sons on every stage of action through a succession of centuries.

Three years after the charter was recalled, the scheme of the College was so entirely in abeyance,—it was, indeed, so wholly lacking in a direct representative in the Colony,—that when Governor Yeardley's widow wished to deliver up the valuable articles given to the institution by English benefactors, and long retained in her husband's custody in anticipation of its early foundation, there was no one, except the Governor and Council, who appeared to have the slightest authority to receive them. It was in these officials' possession that she was compelled to place the silver

gilt cup, the two chalices in their cloth-of-gold cover, the crimson velvet carpet with its gold and silver fringe, the white damask communion cloth, and the four embossed books on Divinity, which pious and philanthropic friends had fondly hoped would adorn the chapel and library of the projected seat of learning beyond the Atlantic.<sup>1</sup> The College itself soon became a mere name, which crops up here and there in the records of subsequent years only in connection with the conveyance of the lands assigned by the Company for the institution's support. As late as 1666, nearly half a century after the scheme was first broached, one of the tracts belonging to the College was still known as the "College Plantation."<sup>2</sup> In that year, there were standing on the estate three tobacco barns, each sixty feet in length, a farmhouse fifty feet, and three dwelling houses ranging from thirty to fifteen feet. It was estimated at this time that there was derivable from the property an annual income of six pounds sterling. During the following year, the memorable storm always designated as the "Great Gust," the most frightful recorded in the Colony's annals, occurred, and all the buildings and the larger proportion of the timber of the place were hurled by the tempest to the ground. At the end of 1670, the estate had declined in value so much that the proceeds from it were not supposed to exceed four pounds sterling, a falling off in amount of one third. A new tobacco barn sixty feet in length had been erected, and presumably several cabins and a large dwelling house. An order was issued by the Governor

<sup>1</sup> Robinson Transcripts, p. 72.

<sup>2</sup> This plantation was composed of lands lying in the Surry county of that day.

and Council that the whole property should be appraised, an indication that the title had not even yet passed to private parties, although it would appear that the lands had been rented on long leases.<sup>1</sup>

A remarkable scheme for the establishment of a university in the Colony was outlined in the will of Edward Palmer, who died about 1624, in London. Palmer owned a large amount of property in both New England and Virginia. He provided that, in case there was a failing of heirs in certain lines of descent from him, his estate in America was to be used in founding and maintaining a great seat of learning on the James River; and with this were to be connected subordinate schools to be known by the name of Academia Virginiensis and Oxoniensis. The most advantageous site which the Colony afforded was to be chosen for these combined institutions; and preparatory to building, the utmost care was to be taken in bisecting the plat with a series of streets or alleys not less than twenty feet in breadth. Whoever could prove that he was sprung in the male branch from John Palmer, of Leamington, the benefactor's grandfather, was to be admitted to all the classes, both in the Academies and the University, without first having to pay a fee after the manner of the scholars; and as a spur to diligence in the hours ordinarily devoted to recreation, the pupils, it would appear, were to receive without cost lessons from two painters, one set of which was to be given in water-colors, and

<sup>1</sup> The barn was built by the "attorney of Mr. Stanford" who, in 1666, had obtained an order from the General Court against "the 3 parte of Francis Newton called the College." Newton was probably the lessee. "From the College to Smith's Fort" is an expression used in a list of tithables in the Surry Records for 1668: see vol. 1645-72, p. 341; see also p. 387, Va. St. Libr.

the other in oil.<sup>1</sup> As the anticipated failure in the line of descent did not occur, this scheme for the establishment of a great college in Virginia was never put to the test of actual experiment. It seems, from some points of view, to have been as visionary as the Grand Model drawn up at a later date by the philosopher Locke for the social and political division of the people of the Carolinas.

<sup>1</sup> This part of the will is rather obscure, and its meaning only arrived at by inference; see Waters's *Gleanings*, p. 982.

## CHAPTER X

### Higher Institutions: Projected College of 1660-1

**A**N anxiety to advance the cause of education by the establishment of a college was, throughout the Seventeenth century, constantly present in the minds of the persons residing in Virginia who had the interests of learning most at heart. It did not require many years to pass after the Company's fall to convince such persons that, if the Colony was ever to possess a seat of advanced instruction, it must be founded chiefly, if not entirely, by the generous contributions of the inhabitants themselves, for there was now no single body in England resembling the Company which would use a direct and powerful influence to induce the English people to give money in support of such a scheme, or would expend large sums on its own account to assure success. A project of this kind must be started in Virginia; and it was only possible to arouse the interest of Englishmen in it by the solicitation of capable agents sent to the Mother Country, who would first have to enlist the English authorities' approval and sympathy. Before the close of the third quarter of the century, there had been at least one memorable scheme set on foot in the earnest hope that the Colony, chiefly by its own exertions, would be able to carry it to a happy completion; this occurred

in 1660, a very short time after the Protectorate had come to an end; the communities of Virginia at this time did not perhaps contain more than twenty-five thousand people, for, in 1649, eleven years before the date of this educational scheme, the size of the population had been estimated at fifteen thousand; and in 1675, fifteen years after that date, it was estimated at fifty thousand. Not only was the number of inhabitants in 1660 still comparatively small, but the amount of wealth, represented by lands, crops, and live stock alone, had not yet reached large proportions. Nevertheless, so eager was the desire among the leading citizens that the Colony should possess an important seat of learning that they unhesitatingly deemed the country rich and populous enough to justify the erection of such an institution; and felt confident that, were it once built, it could be easily supported by the contributions of the Virginians themselves.

During the session of the General Assembly held in the winter of 1660-1, at least three Acts were passed with a view of founding in Virginia an institution that would partake of the character both of a college and a free school. By the terms of the first Act,—and the second followed the first very closely in tenor,—this institution's design was declared to be, in a general way, to advance the interests of learning and to spread abroad the spirit of piety; and, in a special way, to afford to the young opportunities of instruction in the higher branches of knowledge, and to train candidates for the ministry. By the terms of the third statute, the projected institution was described as "a college of students of the liberal arts"; and its main objects were stated to be to encourage learning, nourish religion, and provide, from year to year,

a sufficient number of graduates in theology to fill the vacant pulpits of the Colony.

How was to be raised the fund to meet the cost of purchasing a site and erecting the necessary buildings? This was to be done by personal subscription. The list of contributors led off with the names of the Governor and members of the Council, who bound themselves in considerable sums expressed in both money and tobacco. The justices of the county courts, who formed the wealthiest body of men in Virginia as representing its largest landowners, were urged to follow their example; and they were also directed to swell the roll by securing the names of all persons willing to give pecuniary aid to the scheme. Nor was the probability that assistance of this kind might be obtained in England overlooked; a petition was to be presented to the King with the view of getting his consent to issue letters-patent addressed to persons throughout the Kingdom requesting contributions towards the building of the proposed institution. The General Assembly were so confident that the necessary money would be collected from all these different sources, that, in one of the three Acts which they passed respecting the College, they gave orders that a site should be purchased, and the structures required erected with "all convenient speed." Not until these two steps had been taken were the subscribers to the fund to be called upon to make payment of the different sums they had agreed to contribute.<sup>1</sup>

Why did the scheme of establishing a college in Virginia during the sixth decade of the century prove

<sup>1</sup> The Acts and Orders relating to the proposed college will be found in Henning's *Statutes*, vol. ii., pp. 25, 30, 37. See also Revised Laws, 1662, Colonial Entry Book, vol. lxxxix., p. 7.

so unsuccessful? There is some reason to think that, at this time, the people of the Colony were not in possession of sufficient means to justify them in subscribing the amount really required to found so costly an institution; and the room for the doubt appears all the wider if no aid was to be obtained from persons in England in carrying the project through. There is no evidence that such assistance was sought in an active way. If there was any step taken in that direction, it probably ended in disappointment, and the promoters of the scheme were left with no other resource but to secure contributions in Virginia alone,—a resource that perhaps soon revealed itself to be not altogether adequate. But it may well have been that the chief reason for the scheme's failure lay in the character of the General Assembly itself. Probably, the most selfish legislative body that ever convened in Virginia was the one which, by its prorogation from session to session, came to be known as the Long Assembly. This Assembly remained, by this subterfuge of Berkeley, in existence for fourteen years without a single dissolution to make an election of a new House of Burgesses legally necessary. It was this Assembly, so openly defiant of public sentiment, which was expected to provide an endowment for the proposed college. Under the influence of Berkeley, the boisterous representative in the Colony of the reactionary and shameless spirit then prevailing in the different branches of the restored royal government in England, the members of this Assembly did not hesitate to lay new burdens on the people, and to show in every way in their power that they declined to recognise any responsibility for their own wrong doing. No scheme like the one looking to the



establishment of a superior seat of learning, or to the advancement of any form of public good, was likely to have the support of men who openly regarded their office as a means of enriching themselves personally, or of consolidating and prolonging their individual power indefinitely.

However restricted may have been the fortunes of the Virginian people at large at this period, there was no reason why a great tract of fertile land belonging to the public domain should not have been reserved, after the example set during the Company's existence, to form an endowment for the proposed college. Such a tract would have brought in no income immediately, but as the Colony's population spread, it would have been easy to divide that whole area among numerous tenants under an obligation to pay a profitable rent. Had the members of the Long Assembly appropriated for the benefit of the projected seat of learning one half of the amount which they voted as an annual addition to their own salaries, that sum would, in a few years, have become the nucleus of a large college fund, which, by accretions from the rental of the college tract, would, before the close of the century, have enabled the authorities to establish the proposed institution on a sound and permanent footing. As year followed year, and the Long Assembly, refusing to dissolve, grew more and more callous and self-seeking, the last hope of building such an institution faded away; men, under the influence of the arbitrary acts which that body committed, or which its baneful example encouraged others of inferior authority, like the vestries, for instance, to commit, became apprehensive lest they should be deprived even of their fundamental and inalienable privileges as English

subjects. Popular suffrage was abolished; the right to be represented in the House of Burgesses was threatened by the Assembly's attempt to make itself a perpetual body<sup>1</sup>; and property was practically confiscated by excessive taxation. It is no ground for surprise that the scheme of the College sank out of view under the weight of such crying reasons for popular discontent, a discontent which was to find its last expression in a great insurrection.

<sup>1</sup> The only elections which occurred during the existence of the Long Assembly were those held to fill vacancies in the House occasioned by the deaths of members.

## CHAPTER XI

### Higher Institutions: William and Mary College

THE disorder and poverty succeeding the uprising of 1676, diverted men's minds for many years from the plans of establishing a college in Virginia, but the mere hope that some day such an institution would be founded was probably never absent. There were two powerful influences to keep this feeling constantly nourished:—first, as the century drew on, the number of prominent citizens who had been born in England and educated in its most conspicuous schools, steadily increased, and naturally they did much to create a public sentiment highly favorable to advanced instruction; secondly, the remoteness of the Mother Country, and the extraordinary dangers of the voyage thither, made even the wealthiest parents, however eager to give their children every advantage of the most extended tuition, hesitate to send them so far from home. It was in this combination of feelings that the College of William and Mary had its real origin; but it became a practical possibility by the force of several other influences:—first, the growth of the Colony's wealth and population towards the end of the century; second, the destruction of the reactionary Stuart dynasty; and third, the sagacity, public spirit,

and energy of Governor Nicholson and Commissary Blair.<sup>1</sup>

The active interest shown by Nicholson in the scheme to establish the College is one of the most honorable features of his administration, an administration which, in spite of his foibles, was marked by so much that was useful, far-sighted, and generous. In July, 1690, at a time when, in Howard's absence, he filled the office of Lieut.-Governor, he proposed at a Council meeting to revive the "design of a free school and college," already projected, as he himself stated, by "some pious men"; and he earnestly recommended that a number of persons should be appointed to take the subscriptions of all who were willing to contribute towards the foundation of so beneficent an institution. The Council seems to have agreed at once to the suggestion; several persons were named; and the Governor was requested to confer on them the power to act.<sup>2</sup> In a proclamation issued by Nicholson in the course of the same year, he called upon the justices of the several county courts to send to Jamestown a report containing a full list of the citizens residing within their respective jurisdictions, who were inclined to assist in advancing the scheme of the College.<sup>3</sup>

On May 7, 1691, a resolution was offered in the House of Burgesses declaring that the most advantageous site for the proposed institution would be the land of Ralph Green, the younger, situated on the north side of York River, in Gloucester county, and

<sup>1</sup> In an address by the House of Burgesses dated May 11, 1699, that body declared that, after the King, Nicholson was the chief promoter and supporter of the College; see *Minutes of Assembly*, May 11, 1699, B. T. Va., vol. lii.

<sup>2</sup> *Colonial Entry Book*, 1680-95, p. 372.

<sup>3</sup> B. T. Va., 1690, No. 3, Unassorted Papers.

at this time occupied by Thomas Baytop.<sup>1</sup> Accompanying this resolution was a list of the persons' names who, by their wealth, ability, and social rank, were considered to be worthy of the honor of being appointed members of the Board of Trustees.<sup>2</sup> On the following day, the debate was resumed, and after a more careful discussion of the advantages and disadvantages of the site suggested, it was decided that William Buckner's land lying on the south side of the river, would be a more convenient locality in which to build the College; perhaps as being nearer to the centre of the Colony's population. Mr. Christopher Robinson was, on the 15th, empowered by the Burgesses to announce to the Council the conclusion which they had reached; and also to request that body to choose four from among their own number, as well as four from among the clergy, who, joined to ten persons selected by the Burgesses, should be authorized to receive the royal charter. The Council gave their approval to the latter plan, and at once proceeded to appoint William Cole, Ralph Wormeley, William Byrd, and John Lear to represent their own body, and Rev. James Blair and Rev. John Banister, and whichever two other clergymen these two should name, to represent the Church; but they demurred to the site selected for the institution, and suggested instead that it should be chosen near a town. To this proposed

<sup>1</sup> B. T. Va. 1691, No. 28, Unassorted Papers.

<sup>2</sup> Trustees or the feoffees who were named on this occasion were "Secretary Cole, Ralph Wormeley, Esq., Cols. Edward Hill, John Page, Nathaniel Bacon, Thomas Milner, Lawrence Smith, William Fitzhugh, Miles Cary, Mr. Christopher Robinson, Mr. Henry Hartwell, Mr. James Blair, Mr. Robert Carter, Mr. Benjamin Harrison, Major Charles Scarborough, and Captain John Smith"; see *Minutes of Assembly*, May 8, 1691, Colonial Entry Book, 1682-95.

change the House finally consented; and after an exhaustive debate, they decided it would be best to build the College on land which had belonged to the late Colonel Robert Townsend, but was now in John Smith's possession. This land, which lay on the south side of York River, was situated near the place chosen as the site for York Fort. It was considered by the Burgesses to be advisable that the number of trustees should not exceed twenty, four of whom were to be chosen from among the members of the Council, and four from among the members of the clergy, whilst the remainder were to be nominated by the House. The Burgesses finally concluded to restrict their representatives on the board to nine; and in order that their choice might fully reflect the majority's wishes, each member of that body was directed to prepare a list of the nine persons whom he considered most worthy of being selected. This list he was required to place on the table in the Assembly hall; and when all the lists had been handed in, a committee, composed of Henry Hartwell and two others, was appointed to examine them, and to report the nine names receiving the largest number of votes. A count disclosed the fact that the persons chosen were Nathaniel Bacon, John Page, Thomas Milner, Christopher Robinson, Charles Scarborough, Benjamin Harrison, Miles Cary, Henry Hartwell, and Captain John Smith. Later, the Burgesses selected, as the associates of Rev. James Blair and Rev. John Banister, chosen by the Council as the clergy's representatives, Rev. John Farnefeld and Rev. Stephen Fouace; and they gave directions that the names of all these gentlemen, along with the names of the four Councillors previously selected by that body, should be inserted in the document

containing the instructions already drawn up for the guidance of Rev. James Blair as the agent appointed to visit England for the purpose of obtaining the charter.<sup>1</sup>

On May 20th, five days after the Board of Trustees had been nominated, the General Assembly prepared an address to the King and Queen, in which they declared that they were deeply moved by the pressing necessity imposed on the Colony to supply its youth with an opportunity of obtaining the most advanced and liberal education; and also to afford its vacant parishes the means of securing promptly pious and learned clergymen to fill their pulpits in order to assure "comfort and instruction" to their congregations. In its present condition, the Colony, so they stated, could offer neither. The remedy, the General Assembly earnestly averred, would be the establishment of a free school and college in Virginia, which would also be an unmistakable expression of its people's hearty concurrence in supporting the Protestant Religion and the Church of England. Having mentioned that they had appointed Commissary Blair to present their petition for a charter, they prayed that the projected college might receive the name, *The College of King William and Queen Mary*, in honor of their Majesties.<sup>2</sup>

<sup>1</sup> For the preceding details, see Minutes of House of Burgesses, Oct. 15, 1691, in B. T. Va., 1691, No. 28; see also Minutes of the House, May 15, 1691, Colonial Entry Book, 1682-95.

<sup>2</sup> Minutes of Assembly, May 20, 21, 1691, B. T. Va., 1691, No. 28. President Lyon G. Tyler has justly remarked that "this college was the first in America to be recognized by the royal will, and the first to take rank in theory at least with Oxford and Cambridge as their Majesties' royal college"; *William and Mary College Quart.*, vol. vi., p. 84.

The Assembly granted two hundred pounds sterling to Blair as a fund to cover all the expenses which he was expected to incur during his visit to England.<sup>1</sup> Two days later, on May 22d, he was empowered while in the Mother Country to borrow whatever sums he should have occasion to disburse in an effort to secure a favorable reply to the petition for the charter, provided that the total amount did not exceed that allowed for his private outlay.<sup>2</sup> In the elaborate series of instructions drawn up by the General Assembly, he was required to leave for England by the first ship setting sail, and on his arrival there to be governed by the advice of the Bishop of London, in whose diocese Virginia was embraced. The great object to be accomplished by him was declared to be to procure a charter for a free school and college, in which Latin, Greek, Philosophy, Mathematics, and Divinity should be taught. He was to obtain permission that this institution should be established on the land formerly held by Colonel Edward Townsend at a point situated on the south side of York River, and near the spot chosen for the erection of York Fort; that it should be designated as "William and Mary College"; that it should be founded in the names of the trustees already selected by the General Assembly; that this Board should have the management of all the property belonging to the College, and control

<sup>1</sup> Minutes of Assembly, May 20, 21, 1691, B. T. Va., 1691, No. 28.

<sup>2</sup> Minutes of Assembly, May 22, 1691, Colonial Entry Book, 1682-95. On April 28, 1692, the House of Burgesses adopted a resolution allowing Blair one hundred pounds sterling for disbursements as occasion arose "in managing ye affairs of ye Free School." This money was deposited in the hands of Gawen Corbyn, a merchant of London.



over its revenues and the like; that they should be required to take the usual oaths of office, and subscribe the Test against Popery; that they should perform the duties of their position without remuneration, should possess a common seal, should enjoy the power to choose in the beginning the teachers of the institution, and to fill any vacancies which might occur; that they should be authorized to adopt all orders and ordinances found to be necessary, provided that no order or ordinance adopted was repugnant to the laws of England or Virginia, or the canons of the Anglican Church; that they should have the right to appoint new members of the Board when the old either died or removed from the Colony; and also to elect a chancellor, who should preside over the practical working of the College, and act as its spokesman and representative on every public occasion.<sup>1</sup>

Blair was further ordered to engage a competent schoolmaster, usher, and writing master to fill the corresponding positions in the proposed free school; he was also directed to obtain the royal permission to collect benevolences throughout the Kingdom towards meeting the cost of establishing the College; and also to solicit personal gifts and subscriptions for the same purpose. Although, after his arrival in England, every facility was offered him, he seems to have found some difficulty in engaging for the various chairs to be filled, persons of satisfactory acquirements.<sup>2</sup> But this was a matter of secondary importance in comparison with the question of procuring funds for the support of the institution.

<sup>1</sup> B. T. Va., 1691, No. 23, Unassorted Papers.

<sup>2</sup> Letters of Blair to Nicholson on Dec. 3, 1691, *Va. Maga. of Hist. and Biog.*, vol. vii., p. 160.

In a memorial to the English Government adopted by the General Assembly, December 11, 1691, they stated that two thousand pounds sterling, equal in purchasing power to at least thirty thousand dollars, a very large sum for the people at that period to raise, had already been subscribed in Virginia; and they declared that, whatever deficiency might exist after the King had added his contribution, would be made up by their own body. One means of doing this proposed was to lay a tax on all liquors imported into the Colony; and other measures of a like character were to be adopted should it turn out to be necessary:—for instance, they suggested that a tax of one penny a pound should be placed on all tobacco exported to some point within the American Colonies, and that ten thousand acres situated on the southern bank of the Blackwater River, and one hundred thousand situated in Pamunkey Neck, should be appropriated for the College's support. As an additional means of raising revenue, the Surveyor-Generalship of Virginia might be bestowed on the institution. Since the incumbent of this office appointed the county surveyors and shared in their profits, it alone would afford an income that would fall little short of one hundred pounds sterling each year. The revenue to be derived by the College from the possession of this office was expected to be increased by the fact that the students in the school of mathematics would be fully competent to make the surveys.

The General Assembly further recommended that all escheated lands not otherwise disposed of by law should become the College's property; and they apparently also recommended that, in imitation of the great English Universities, the institution should have

the power to appoint clergymen to livings. Nor did they think that the Virginians' generosity had been exhausted by the subscriptions already made; on the contrary, they believed that additional sums, in the form of gifts and benevolences, would be contributed if earnestly solicited. The General Assembly also urged that the two thousand pounds sterling then in bank to the credit of the royal quit-rent account, and unappropriated for any special purpose, should be devoted to meeting the expense of establishing and supporting the projected College.<sup>1</sup>

This weighty memorial received the careful consideration of the English authorities. Not many months passed before they presented their conclusions in the form of a report, in which it was stated that the following revenues, so far as they were not appropriated for other purposes, might be made available for the College's use:—first, a sum amounting to about nineteen hundred and eighty-six pounds sterling lying in the hands of Mr. Blaithwayt, the Auditor-General; secondly, the quit-rents of Virginia, which were estimated at one thousand pounds sterling per annum; thirdly, an equivalent, in the form of tobacco sold in England, for the tax of one penny a pound imposed on all shipments of that commodity from Virginia to any of the Colonies; fourthly, ten thousand acres situated on the Blackwater River and in Pamunkey Neck respectively, a total of twenty thousand; and, finally, all escheated lands of which no other disposition had been made.<sup>2</sup>

<sup>1</sup> B. T. Va., Dec. 11, 1691, No. 71.

<sup>2</sup> *Ibid.*, 1692, No. 116. The question as to how the clergy in Virginia were to be better supported was also considered in this report.

It will be seen from the preceding that the English authorities had adopted substantially all the General Assembly's recommendations. There seems to have been some opposition expressed to the application of the surplus in Mr. Blaithwayt's hands towards the College's erection and support, on the ground that as this sum "was the only ready cash in all the plantations," it should be carefully preserved for use in case of a great emergency, such as an invasion by the French or a descent of the Indians, which it was said, men had recently begun to fear very vehemently. Possibly with the view of shaking the English Government's resolution by dwelling on the strong probability that the fund would be needed for this purpose, it was declared that all the military magazines and fortifications in Virginia had been lately reported to be in a very bad condition; how were these defenses to be repaired, should this fund be expended in founding the projected institution? <sup>1</sup>

<sup>1</sup> B. T. Va., 1692, No. 116.

## CHAPTER XII

### Higher Institutions: William and Mary College (*Continued*)

**I**T was not until the first of September, 1693, that Blair was able in person to place in the hands of the Governor sitting in Council a copy of the charter for the establishment of the College. It bore the date of February 8, 1692-3, and its acquisition had been made possible only by the indefatigable energy, zeal, and sagacity shown by him throughout the whole of his noble and beneficent mission. In the vigorous prosecution of that mission, he had been especially strenuous in laying emphasis on the great impulse which such an institution would give to the prosperity of religion in America.<sup>1</sup> It had always been a satisfaction to the English ecclesiastical authorities to think that such a nursery of piety would be established in the New World; that it would be begun "in an Episcopal way"; and that it would be conducted by unswerving conformists<sup>2</sup>; and this feeling on their part, Blair had succeeded in so confirming that they had responded to his appeal by affording him the most

<sup>1</sup> He did not always find sympathetic hearers, as is proven by the well-known anecdote of his conversation with Seymour. Seymour was not disposed to encourage the project. "But my Lord," remonstrated Blair, "the Colonists have souls to save." "Souls! Damn their souls!" was the brusque reply, "make tobacco."

<sup>2</sup> Beverley's *History of Virginia*, p. 80.

active and powerful assistance. In the King also he had found, from the first hour of his arrival, an earnest and sympathetic supporter. It must have caused him extraordinary pride and happiness to return to Virginia with the invaluable document in his custody; and the moment at which he placed it in the possession of the Governor and Council was, no doubt, the most deeply satisfactory one of his life.<sup>1</sup>

The charter was first formally read; it was then entered in the minutes of the Council; and afterwards, as the final step, transmitted to the Secretary's office with a view to its being recorded. One warrant for eleven hundred and thirty-five pounds and fourteen shillings addressed to the then Auditor, the elder William Byrd, and another for eight hundred and fifty pounds, addressed to the executors of the elder Nathaniel Bacon, the late Auditor, were promptly drawn under the authority of the royal order granting the surplus in the control of Mr. Blaithwayt for the College's use. These two warrants were made payable to Francis Nicholson and the gentlemen named in the charter as the Board of Trustees.<sup>2</sup> This seems to have been the first fund appropriated to begin the construction of the College.

About three weeks (Sept. 20) after this memorable scene occurred, the full Board of Trustees formally visited the House of Burgesses, where, after they had been received in state, Blair gave a graphic and detailed description of his successful endeavor to secure the charter; and his speech having been concluded, the

<sup>1</sup> To show their appreciation of the value of Blair's services, the Assembly voted him £250; see Minutes of Assembly, Nov. 14, 1693, Colonial Entry Book, 1682-95.

<sup>2</sup> Minutes of Council, Sept. 1, 1693, Colonial Entry Book, 1680-95.

Board withdrew from the hall. The document was then read, and the twenty-fifth of October assigned as the day on which a site for the College should be selected, as this question had been expressly left open by the charter's provisions. An interval of a month was allowed before the final choice should be made, in order that the Trustees might have a full opportunity to visit the different sites suggested, and to compare their advantages. When the twenty-fifth of October arrived, the House adopted a resolution requiring all the Trustees happening at that time to be in Jamestown to appear at the bar on the following day. On this occasion, Blair, who seems to have always acted as the Board's spokesman, contented himself with reading a paper in which he had set forth the respective conveniences and inconveniences of the Middle Plantation, Yorktown, York Old Fields, and the Green plantation in Gloucester county. Immediately on the Trustees' withdrawal, the House rejected a proposition designating the Townsend plantation as the College site; and the same fate seems to have overtaken a proposition to build it on the tract in Pamunkey Neck assigned to the institution. Finally, it was decided that the Middle Plantation offered more advantages and fewer inconveniences than any other spot mentioned as appropriate for the purpose, and it was, therefore, definitely adopted as the one on which the College should be built.<sup>1</sup> This place presented two aspects of superiority over the others discussed:—first, it was very central in relation to the then inhabited parts of the Colony; and secondly, it had been always remarkable for its salubrious air. These two

<sup>1</sup> Minutes of Assembly, Oct. 20, 25, 26, 1693, Colonial Entry Book, 1682-95

important considerations turned the balance in its favor.

It was provided by an Act of Assembly that the College should be erected as near the Church at Middle Plantation as convenience would permit. One of the earliest of the additional measures now adopted for the institution's support was the imposition of a graduated tax on the different kinds of hides annually exported from the Colony, such as deer-skins, the skins of beaver, otter, wild cat, mink, fox, raccoon, muskrat, and elk. The sums obtained from this source were to be paid to the Board of Trustees by the collectors.<sup>1</sup> A few days after the passage of this Act, however, the Assembly declined to exempt from the levies the masters and scholars of the College, or the artizans and working men who might be employed about it.<sup>2</sup>

The College's foundation stone does not seem to have been laid until the eighth of August, 1695, on which occasion, the Governor and Council were formally invited by the rector, Captain Miles Cary, to be present, an honor immediately accepted.<sup>3</sup> The ceremony took place on the land bought of Captain Thomas Ballard for the sum of one hundred and seventy pounds sterling. This land covered an area of over three hundred acres.<sup>4</sup> By the middle of October, the building

<sup>1</sup> Hening's *Statutes*, vol. iii., pp. 122, 123.

<sup>2</sup> Minutes of Assembly, Oct. 31, 1693, Colonial Entry Book, 1682-95.

<sup>3</sup> "His Excellency was pleased to acquaint the Council that Capt. Miles Cary, Rector of William and Mary College, did inform him that the Committee had appointed Thursday August 8 next for ye laying ye foundation of ye said College"; Minutes of Council, July 25, 1695, B. T. Va., vol. liii.

<sup>4</sup> These details and those following will be found in the state-



operations were well under way; eighteen months afterwards, two sides of the square (which had been adopted as the architectural design for the structure), had been carried up to the point of the roof; and the roof itself, the Trustees reported, would soon be put on and shingled.<sup>1</sup> Two years later, the College had so far been completed that the work of the grammar school had begun. Brick, stone, and wood alike entered into the building's construction. The earliest purchase of brick seems to have been made of Col. Daniel Parke, who no doubt had manufactured this material on his own plantation, whilst the stone was perhaps obtained from a quarry in the vicinity. Some of the bricklayers appear to have been sent for from England. All the stores were bought of Perry and Lane, the great mercantile firm of London, which, for many years, had enjoyed a large trade with the Colony.

A statement of the accounts down to February 27, 1696-97, shows that, previous to that date, the expenditures for every reason, including the cost of the land and building material, the fees of lawyers and surveyors, the wages of clerks and artisans, and the like, amounted to the round sum of thirty-eight hundred and thirty-four pounds sterling. What were the funds with which these heavy charges were paid? Roughly speaking, they consisted of the following: first, the sum of nineteen hundred and eighty-five pounds and fourteen shillings granted, as we have seen, by the King and Queen out of the balance of the quit-rents in bank; secondly, donations held by the Treasurer, equal in value to five hundred and nine pounds; and thirdly,

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ment of Debits and Credits recorded in B. T. Va., 1697, vol. vi., p. 88; see also Report of Trustees, p. 83.

<sup>1</sup> B. T. Va., 1697, vol. vi., p. 83.

three hundred pounds obtained by the "privateers." To these sums must be added special gifts from Perry and Lane, Col. Ludwell, and Rev. Mr. Fouace. The whole was estimated to be about thirty-one hundred and eighty pounds sterling. The sum which had accrued from the various import and export duties assigned to the College, amounted by October, 1695, to four hundred and forty-one pounds sterling. In spite of all these large sums combined, the deficit, when the first balance was struck, came to about one hundred and seventy pounds sterling; but this was promptly made good by the trustees' advances.<sup>1</sup>

By the following April, the funds in hand had begun to run so low that the Trustees complained to Governor Andros that the work of building and furnishing the College had been brought almost to a stop; and as one means of obtaining the money so urgently required, they reported that they had requested Blair, the President of the institution, to undertake a second mission to England.<sup>2</sup> It does not appear that the Trustees applied to the General Assembly for assistance at this time, probably because in October of the previous year, that body, when Andros had recommended that they should make an appropriation for the College's encouragement, had replied that the country was "in no capacity to do this."<sup>3</sup> The depression in the value of the Colony's main commodity, tobacco, seems to have caused so much delay on the part of many who had subscribed towards the institution's establishment, that, in 1699, the Trustees found themselves obliged to bring suit against the delinquents. In one county

<sup>1</sup> B. T. Va., 1697, vol. vi., p. 83.

<sup>2</sup> *Ibid.*

<sup>3</sup> Minutes of House of Burgesses, Oct. 3, 1696, B. T. Va., vol. lii.

alone, that year, eleven such judgments were entered ranging from one to five pounds sterling.<sup>1</sup> The proposition to impose a general tax for the College's assistance at this time must have been broached in the House of Burgesses, for we find among the grievances recorded in the minutes for 1699, one from Isle of Wight county containing a strong protest against such a charge, on the ground that the people were so much impoverished.<sup>2</sup> The lands granted to the College in Pamunkey Neck, and on the south side of the Blackwater River, must now have assured a certain amount of income, for, three years before, the effort to lease them had proved successful.<sup>3</sup>

The institution had reached such a secure footing before the end of the century that bequests from two persons of distinction, who died previous to that date, were used for its benefit. Henry Hartwell left it fifty pounds sterling outright, and also one hundred pounds for the establishment of scholarships; dependent, however, upon the contingency of his nephew's life.<sup>4</sup> The gift of Robert Boyle was far more important in amount, but perhaps not quite so practical in character; in his will he gave directions that Brafferton Manor, in Yorkshire, valued at fifty-four hundred pounds sterling, should be purchased, and the income, estimated to be about two hundred and fifty pounds sterling annually, expended in spreading Christianity among the Indians of North America. The whole of this income, with the exception of one fifth reserved for use among the tribes residing in New England, was, through Macajah Perry, the agent of Virginia in London, delivered to the

<sup>1</sup> Henrico County Records, Orders March 1, 1699.

<sup>2</sup> Minutes of Assembly, May 10, 1699, B. T. Va. vol. lii.

<sup>3</sup> B. T. Va., 1697, vol. vi., p. 83.

<sup>4</sup> Hartwell's will in Waters's *Gleanings*, pp. 313, 314.

Trustees of William and Mary College, with the understanding that they were to procure clothes, lodging, and tuition for nine or ten young Indians, who were to be trained according to rules laid down by Lord Burlington and the Bishop of London. They were to be taught how to read and write, and also instructed in all those arts and sciences which the Englishmen of that day had to learn; but first of all they were to acquire a thorough knowledge of the principles of the Christian religion. This bequest seems to have become available as early as 1700, for, in the course of that year, Governor Nicholson wrote to Robert Hicks and John Evans, two well known Indian traders, through whom the Indian youths were to be obtained, that room in the College would be ready for these youths by "the next summer"; that the age of each should not exceed eight years; and that they should be accompanied by a woman of their own race in order that they might not forget their native tongue by disuse.<sup>1</sup>

The original plan adopted for the division of the course of instruction designed for the white scholars entered in the College, was that there should be a grammar school in which Latin and Greek should be taught; a school of Philosophy and Mathematics; and one of Divinity and Oriental Languages. The expectation in the beginning was that each of these schools would require at least two able masters and professors.<sup>2</sup> The Charter itself made provision for the establishment of five chairs; one was to be dedicated to Latin and

<sup>1</sup> See Letter of Nicholson among the unbound Va. MS. at Fulham Palace; see also MS. at Lambeth Palace for full account of Brafferton Manor. Some of these papers have been published in *William and Mary College Quarterly*.

<sup>2</sup> See Memorial concerning the College, Dec. 11, 1691, B. T. Va. No. 71.

Greek, one to Mathematics, one to Moral Philosophy, and two to Divinity.<sup>1</sup> Writing in April, 1697, the Trustees stated that they had been able to open the grammar school under the care of an excellent schoolmaster and writing master. The first accounts of the institution show the entry on the pay-roll of the names of only Mr. Mongo Inglis, the schoolmaster, Mr. Mullikin, the usher, and Rev. James Blair, the President. The salaries of these officers were respectively twenty-five, thirty, and one hundred and fifty pounds sterling per annum.<sup>2</sup> In 1699, Mr. Inglis was designated as the "Humanity Professor," whilst John Hodges succeeded Mr. Mullikin as the usher of the school.<sup>3</sup> Ten years after the College was founded, Inglis himself complained that it still remained a mere grammar school without those professorships of Philosophy, Physics, Mathematics, and Divinity, which had been originally intended.<sup>4</sup> But this fact did not prevent the institution's possibilities from being fully understood even at this early period; the mere fact that it had been established at all, after so many difficulties had been overcome, was one which to all thoughtful minds augured well for its future greatness.

Although the College did not rise above the importance of a grammar school at this time, it nevertheless possessed after the manner of Oxford and Cambridge Universities, the right to return a member to the Assembly.

<sup>1</sup> See Campbell's *History of Virginia*, p. 347.

<sup>2</sup> B. T. Va., 1694, vol. vi., p. 88. Inglis at a later date seems to have been paid an annual salary of eighty pounds sterling.

<sup>3</sup> Minutes of Assembly, May 17, 1699, B. T. Va., vol. lii. Inglis's hours for giving instruction were from 7 o'clock to 11 o'clock in the morning and from 2 to 6 o'clock in the afternoon; see *Va. Maga. of Hist. and Biog.*, vol. iv., p. 254.

<sup>4</sup> Present State of ye College, 1703, *Va. Maga. of Hist. and Biog.*, vol. ix., p. 251.

As its board of electors was restricted to the President, Masters, and Professors of the institution, it constituted a borough of a unique character for Virginia, though not for England. In 1696, when these officers were formally summoned to meet in the Court-house at Jamestown to choose a Burgess, no one appeared, and the College went, that year at least, without a representative.<sup>1</sup> At this date, the privilege of casting a vote was perhaps in the enjoyment of two men only, the President and the schoolmaster, although the usher and writing master may each also have had a voice.

The extraordinary interest taken in the institution's success by the most influential persons of the Colony was reflected in the final adjournment of the House of Burgesses in April, 1699, in order to attend the College exercises on May Day. When that body again assembled, Governor Nicholson congratulated them on having so readily and heartily joined with him in solemnizing so memorable an event. "The most proper place for you on that occasion," he exclaimed, "I concluded to be at his Majesty's College of William and Mary, where you might not only be eye witnesses of one of his royall Majesty's bounties and royal favors to Virginia, but also judges of the improvement of your youth in learning and education; and I hope in God you are satisfied as to both." That the Burgesses were pleased is shown by their felicitations to Nicholson a few days later; they dwelt upon the great happiness afforded them by their having had an opportunity in person to observe "the improvement of their youth in knowledge and literature"; and they declared that they considered it "an unspeakable blessing to have their children

<sup>1</sup> Minutes of House of Burgesses, Sept. 25, 1696, B. T. Va., vol. lii.

brought up in so fair a way of being rescued from barbarous ignorance.”<sup>1</sup>

The commencement held at the College in the following year was an event of so much distinction that the memory of it long survived. A great multitude of people were in attendance, and it was noted at the time, with justifiable pride, that the spectators were not drawn entirely from Virginia, but that very many hailed from Colonies situated as far away as New York and Pennsylvania. The planters, with their families, from all the surrounding counties had come in their coaches or on horseback, whilst the strangers from a distance had sailed down the coast in their sloops.<sup>2</sup> It was a scene full of animation and novelty, and one of the first to foreshadow the great part which the institution was soon to play, not only in the educational affairs, but also in the social life, of the Colony. With both the College and the Assembly centred in Williamsburg,<sup>3</sup> that little town was destined, in a few years, to assume the aspect of a small capital, from which was to radiate throughout Virginia the influences of a larger culture, both social and literary. Tried by the standards of modern institutions of the like nature, the little seat of learning founded in this remote plantation community seems but a small establishment after all; but if we look on it, as we should, as the earliest beacon to cast the beam of advanced scholarship far and wide through the first of the Southern Colonies, it assumes a beneficent significance far out of

<sup>1</sup> Minutes of Council, May 2, 12, 1699, B. T. Va., vol. lii.

<sup>2</sup> Campbell's *History of Virginia*, p. 361.

<sup>3</sup> In urging the removal of the capital to Williamsburg in 1699, Nicholson declared “that it would be a greater kindness to the College than if you had given £2000 for the use of it.” See Minutes of Council, May 18, 1699, B. T. Va., vol. lii.

proportion to its course of studies or the number of its students. Above all, if we gauge the value of its work by the great men whom it nourished even before the Revolution, this college becomes at once clothed with all the dignity of an institution which has made a profound impression on the destinies of a powerful nation. Jefferson, the author of the Great Declaration, and the Founder of American Democracy; Marshall, the Interpreter of the Constitution; Monroe, the proclaimer of the Doctrine which has resounded throughout the world,—such were three of the sons, to name only the most eminent, who, when their minds were most sensitive to impressions, sat at the feet of this Alma Mater, and who, by the achievements of their after lives, reflected extraordinary distinction on her teachings.<sup>1</sup> In spite of two great social and political revolutions, which scattered broadcast the seeds of destruction as they occurred, the College still survives, a venerable monument of a glorious past, still full of promise of a long and useful career in the future.<sup>2</sup>

<sup>1</sup> John Tyler was also an alumnus of this institution.

<sup>2</sup> In recent years, William and Mary College, through the work especially of its President, Lyon G. Tyler, has become closely identified with historical investigations which have thrown much new light on the past of Virginia, whether as a Colony or as a State.



## CHAPTER XIII

### Libraries: Value Attached to Books

**I**F Berkeley, in his memorable reply, in 1671, to the inquiries of the English Commissioners, had been satisfied to return thanks to God because there was no printing press to be found in the Colony at that time, he would have been much nearer the truth than in foolishly congratulating himself on the imaginary absence of free schools.<sup>1</sup> It was always easy for those in authority to destroy such an instrument for enlightenment, should one exist. Previous to 1680, there does not seem to have been a single printing press in Virginia. When it was then considered desirable to put the laws in type, a copy in handwriting had to be sent to England; such was the course pursued by the General Assembly at its session in the winter of 1661-2.<sup>2</sup> In 1680, John Buckner, a merchant residing in Gloucester county, imported a printing press, and it would appear also a trained printer, William Nuthead by name, to manipulate it. That he had the General Assembly's countenance and support in 1680 at least was shown by his receiving an order from this body to print the Acts passed in the course of that year. Accused at a

<sup>1</sup> "Learning had brought disobedience and heresy and sects into the world, and printing had divulged them, and libels against the best government"; Hening's *Statutes*, vol. ii., p. 517.

<sup>2</sup> Hening's *Statutes*, vol. ii., p. 147-8.

later date of working without a license, and summoned before the Governor and Council to answer the charge, he was required to give bond to refrain from using his press until the royal pleasure as to whether it should be permanently stopped or not, was ascertained. In reply to an inquiry, a command came from England that no one residing in the Colony should, on any occasion whatsoever, be allowed to operate such a press<sup>1</sup>; but this prohibition was slightly modified by the instructions drawn up for Howard's guidance a few years afterwards: that Governor was enjoined to forbid the use of the printing press within his jurisdiction unless a special license had been first obtained from him.<sup>2</sup> Howard, as well as his immediate successors, must have been indisposed to grant such a privilege, for apparently no such press was introduced at any time during the remaining years of the century; as late as 1698, Andros, in transmitting to England copies of recently enacted laws, was forced to apologize for the rude form in which they were presented, on the ground that "all conveniences for putting them up handsomer were lacking in Virginia." There seems to have been good reason why excuses should be offered, for, about this time, the English authorities grew so impatient with the rough appearance of the documents received by them from the Colony, that they sent over a great quantity of ruled paper, with directions that thereafter such paper alone was to be used in all communications with the English Government.<sup>3</sup>

<sup>1</sup> Minutes of Council, Feb. 25, 1682-3, Colonial Entry Book, 1680-95; *Va. Maga. of Hist. and Biog.*, vol. i., p. 406; *William and Mary College Quart.*, vol. vii., pp. 9, 10; Hening's *Statutes*, vol. ii., p. 518.

<sup>2</sup> Colonial Entry Book, 1685-90, p. 59.

<sup>3</sup> Letter of Andros to Secy. of State, June, 1698, B. T. Va., vol. vi., p. 361.

✓ From the preceding facts, it may be safely concluded that the large number of books to be found in Virginia during the Seventeenth century had, perhaps, without a single exception, been printed outside of the Colony's boundaries. The far greater proportion of these volumes had been printed in England; the remainder were from the presses of Holland and France. The collections of English books indicate that the planters, under the influence of the education acquired by them in the schools of the Mother Country or of the Colony itself, looked upon reading as not the least important form of amusement in which they could seek recreation. We learn from the records of Lower Norfolk that, in 1647, Jacob Bradshaw, of that county, "received his death at the hands of God by lightning and thunder of Heaven, as he was lying on a chest and readinge in a Booke." It is possible that some bigoted enemy of learning, under whose observation this incident may have fallen, held up Bradshaw's fate as a judgment from the Almighty, but, from the testimony of the few surviving county records, there is room for thinking that such an occupation of the time was not unknown even among the members of the class furnishing most of the manual laborers.<sup>1</sup> Many instances are found of books being owned by such mechanics as blacksmiths,

<sup>1</sup> Lower Norfolk County Records, vol. 1646-51, p. 51. Capping verses seems to have been a not infrequent amusement. "Depn. of Richard Cox saith that yor. Depont. being at the House of Lieut. Col. John Tilney in company with Alexander Gibson and Thomas Johnson, yr. Depont. heard ye sd. Col. Tilney and ye sd. Gibson capping verses, upon wch. ye sd. Col. Tilney fell out, and ye sd. Tilney bade Gibson begone out of his house, and yr. Depont. did then and there see ye sd. Col. Tilney strike ye sd. Gibson a great blow on the back with a tobacco stick or some such like." See Accomac County Records, vol. 1676-78, p. 106. Another case is recorded in vol. 1673-76, p. 337.

carpenters, and the like; though the volumes in their possession were few in number, it is not improbable that, for this reason, if for no other, these volumes had been the more carefully and frequently read.

One of the most remarkable proofs of the interest felt in the Colony at this time in books is brought to light in the special bequests so often made of them by will. A few instances may be given. In 1652, Thomas Gibson, of York, left his entire collection of volumes to his son; and three years later, Richard Stanwell, of Lower Norfolk, followed his example.<sup>1</sup> The wife of Rev. Robert Dunster, of Isle of Wight county, was, in 1656, the beneficiary of a similar bequest from her husband<sup>2</sup>; and Captain Robert Ellison, of York, from his friend, Henry Waldron.<sup>3</sup> In 1667, Richard Russell, of Lower Norfolk, a zealous member of the Quaker sect, instructed his executors to divide his collection of books (twenty-five in number of titles, though perhaps as many as fifty or sixty volumes in all) among seven friends belonging to the same faith as himself. These volumes were, no doubt, of a religious character.<sup>4</sup> By the terms of Laurence Washington's will, drawn about 1675, all his books were to be delivered to his son John as soon as he came of age.<sup>5</sup> Three years later, John Michael, of Northampton, bequeathed to his "dear and pious brother" all the works in his collection written in the Dutch language.<sup>6</sup>

<sup>1</sup> York County Records, vol. 1633-94, p. 38. Va. St. Libr.; Lower Norfolk County Records, vol. 1651-56, p. 179.

<sup>2</sup> Isle of Wight County Deeds and Wills for 1656.

<sup>3</sup> York County Records, vol. 1657-62, p. 19, Va. St. Libr.

<sup>4</sup> Lower Norfolk County Records, vol. 1666-75, pp. 28<sup>2</sup>, 33<sup>2</sup>. See also Lower Norfolk County Antiquary, vol. i., p. 105.

<sup>5</sup> Rappahannock County Records, vol. 1664-73, p. 101, Va. St. Libr.

<sup>6</sup> Northampton County Records, vol. 1674-79, p. 340.

James Love, apparently at one time a ship-surgeon, who died in Rappahannock county about 1681, left by will "a large cedar chest full of books" to Captain John More, of the sea going vessel *Alexander*, a citizen of Bristol, in England.<sup>1</sup> Nathaniel Walker, of Northampton, followed the example of George Mortimer, of the same county, in bequeathing all his volumes to a friend.<sup>2</sup> By the provisions of the will, dated 1684, of Francis Pigott, also of Northampton, his collection of books, with the exception of the Latin and Greek, was to be divided among his three sons as soon as the youngest reached the age of twenty-one. All the works printed in the two ancient languages were to pass immediately to the eldest, in whose care the whole set was to remain until the hour for division should arrive. The younger sons were to be allowed in the interval to take away any special book which they desired to read, on condition that they left with their brother a note expressing their willingness to return the volume whenever he had occasion to use it.<sup>3</sup> It would appear that this library was one of importance both in the number and variety of its works; and that it was highly valued by its owner is shown by the minuteness of his directions for its disposition.

(A few years after Mr. Pigott's death, Mrs. Ann Bevill, of Henrico, by deed of gift during her lifetime, divided her collection of books equally between her two sons.<sup>4</sup> Henry Kent, a citizen of the same county,

<sup>1</sup> Rappahannock County Records, vol. 1677-82, p. 90, Va. St. Libr.

<sup>2</sup> Northampton County Records, vol. 1679-83, p. 49, vol. 1683-89, p. 25.

<sup>3</sup> *Ibid.*, vol. 1683-89, p. 123.

<sup>4</sup> Henrico County Records, vol. 1677-92, see Wills for 1686. This gift was entered of record, an evidence that the collection of books was a large and valuable one.

whose personal estate was appraised at twelve thousand and six hundred pounds of tobacco, bequeathed forty-five books, amounting perhaps to one hundred volumes or more, to his heirs.<sup>1</sup> In 1690, Col. John Carter left by will to Robert Carter all those works in his library written in the Latin tongue, or relating to the subject of law.<sup>2</sup> In the course of the same year, Edward Foliott, of York, instructed his executors to divide his collection of English works into two equal shares, and to deliver one share to each of his "two sons-in-law," Henry and Charles Hansford.<sup>3</sup> Col. Arthur Smith, of Isle of Wight county, in 1693 bequeathed "all his bookes" to his son<sup>4</sup>; and his example was imitated about the same time by John Wallop, of Accomac; who, however, reserved by name a few, with directions that they should become his daughter's property.<sup>5</sup> This was also done in 1695, by Henry Awbrey, of Essex, the exception in his case being for the benefit of his wife<sup>6</sup>; and a similar exception was, in 1697, made by William Catlett, also of Essex, who left the remainder of his library to his brother.<sup>7</sup> Conquest Browne, of Westmoreland, in 1698, bequeathed all his books outright to his son; William Fitzhugh, on the other hand, who died a few years later, divided his collection between two sons, William and Henry.<sup>8</sup>

It very frequently happened that a particular book was held in such extraordinary esteem by its owner that,

<sup>1</sup> Henrico County Records, vol. 1677-92, orig. p. 388.

<sup>2</sup> Lancaster County Records, original vol. 1690-1709, p. 4.

<sup>3</sup> York County Records, vol. 1687-91, p. 490, Va. St. Libr.

<sup>4</sup> Isle of Wight County Records, vol. 1661-1719, p. 331.

<sup>5</sup> Accomac County Records, Wills for 1693.

<sup>6</sup> Essex County Records, vol. 1692-95, p. 352, Va. St. Libr.

<sup>7</sup> Essex County Records, Orders April 11, 1697.

<sup>8</sup> Westmoreland County Records, vol. 1690-99, p. 143; *Va. Maga. of Hist. and Biog.*, vol. ii., p. 277.

in drawing up his will, he was moved to bequeath it by name to some one whom he regarded with feelings of the strongest affection or gratitude; for instance, in 1643, after leaving to Col. John Tilney all his chirurgical treatises, Dr. John Holloway ordered his executors to deliver his Greek Testament in folio to Rev. John Rosier; his catechism to Mr. Philip Taylor; and a volume entitled *The Humiliation for Sinne* to Mr. John Fullard.<sup>1</sup> In a like spirit, Francis Slaughter, of Rappahannock, in 1657, left Hooker's *Ecclesiastical Polity* to Mr. Moore Fauntleroy, his brother-in-law.<sup>2</sup> William Burdas, of Lower Norfolk, about the same time bequeathed to different friends copies of works entitled the *English Physician*, the *Practice of Physick*, the *Dispenser* and *Thoughts on Surgery*, all of which were, no doubt, highly acceptable from their usefulness in cases of sickness.<sup>3</sup> Arthur Hoppin, of the same county, followed his example by presenting by will two books, one of which was Heyland's well known cosmography.<sup>4</sup> To one friend, John Kirby, of Northumberland, bequeathed, in 1667, the *Practice of Piety*; to another his *Reveries*; and to another still, a third favorite volume.<sup>5</sup> John Sampson, of Rappahannock, several years later, instructed his executors to deliver to Mrs. Sarah Suggett his small Bible adorned with silver clasps, his *Herne* in folio, his *Heaven Opened*, and the *Life and Death of Mr. John Janway*; whilst Mr. John Taverner was to be presented with his copy of the *Religio Medici*, and the publications of the French Academy.<sup>6</sup> John Wallop

<sup>1</sup> Northampton County Records, Orders Aug. 31, 1643.

<sup>2</sup> Rappahannock County Records, vol. 1656-64, orig. p. 83.

<sup>3</sup> Lower Norfolk County Records, vol. 1666-75, p. 25<sup>1</sup>.

<sup>4</sup> *Ibid.*, vol. 1666-73, p. 34.

<sup>5</sup> Northumberland County Records, Wills, vol. 1666-72.

<sup>6</sup> Rappahannock County Records, vol. 1677-82, orig. p. 61.

in 1693, left to his daughter, not only the family Bible, but also two works known by the titles of the *Woman's Counsellor*, and the *Countess of Kent's Choyce Manualles*.<sup>1</sup> (Christopher Branch, of Henrico, valued a Latin book in his possession so highly that he bequeathed it to one of his friends as an evidence of his affection.<sup>2</sup>)

Such are a few of the very numerous instances preserved in the surviving county records of the Seventeenth century which might be given to show the esteem in which many testators held particular books belonging to their collections.

<sup>1</sup> Accomac County Records, Wills for 1693.

<sup>2</sup> Henrico County Records, vol. 1677-92, orig. p. 209.



## CHAPTER XIV

### Libraries: Size of Collections

THE inventories of the personal property appraised during the Seventeenth century throw a light more remarkable than even that of the wills on the extent to which books formed a part of the planters' estates in these early times. Two facts should be borne in mind in estimating their number and value by the entries found in these inventories: first, the number of books is based on the number of titles, and not on the number of volumes; it would be within the bounds of strict accuracy to calculate that, on the average, there were at least two volumes to each title, for some of the titles, we know, represented as many as five or six volumes; secondly, in the appraisement, only the book's physical condition was considered, which, either from age or constant reading, was generally highly dilapidated; under these circumstances, the pecuniary value was always rated extremely low, and forms, therefore, no real criterion of the book's intrinsic merit from a literary point of view. Copies belonging to the same edition of the same work, might, in the same appraisement, be entered at figures ranging very widely apart from each other.

To give in these pages either the full number, or the complete list, of the titles of the books owned in Virginia

during the Seventeenth century would be manifestly impracticable, even if the records of all the counties had survived to the present day. In one county alone, Lower Norfolk, there are still preserved the names of more than one hundred owners of books for a single interval not exceeding fifty years.<sup>1</sup> Some of the collections contained hardly a dozen volumes; others, on the other hand, contained such a number and variety of titles that they would be justly considered, even in our own times, to constitute libraries of importance. I shall select from each of the counties whose records have come down to us, at least in part, the names of the owners of the principal collections of books, and as far as possible state the size and value of these collections,—a matter of difficulty even when the number of titles is mentioned, as the number of volumes remains a matter of speculation to be approximated only by striking the probable average.

First, as to the collections of books owned in Lower Norfolk county. Here, as elsewhere, the character of the works is often largely religious. Of the five in George Lock's possession, in 1641, one was a Bible and another, the *Practice of Piety*, a proportion frequently observed.<sup>2</sup> A part of the personal estate of Philip Felgate, designated as "gentleman," consisted, in 1647, of a "parcell of bookes," valued at eighty pounds of tobacco,<sup>3</sup> whilst the collection belonging to John Yates's estate was supposed to be worth about two hundred and twenty pounds of the same commodity.<sup>4</sup> In both of these cases, the volumes' physical condition

<sup>1</sup> The interval between 1640 and 1690. See the various issues of the Lower Norfolk County Antiquary.

<sup>2</sup> Lower Norfolk County Records, Orders Sept. 6, 1641.

<sup>3</sup> *Ibid.*, vol. 1646-51, p. 47.

<sup>4</sup> *Ibid.*, p. 94.

was alone considered, and as that condition was probably bad, their number is likely to have been much larger than their appraisal would appear to show. The estate of John Kemp included seven works treating of chirurgery; and, in addition, there were others of a more general character; such, for instance, as Aristotle's *Problems*.<sup>1</sup> Among the items of Edward Hodges's personal estate, an estate appraised at eleven hundred and thirty-three pounds of tobacco, were two works which alone were valued at fifty pounds.<sup>2</sup> Of those included in the inventory of John Pigott's collection, one was Hakluyt's *Travels*.<sup>3</sup> The works forming a part of the personal estate of John Gilham, who died about 1651, numbered eight titles, equal perhaps to sixteen volumes.<sup>4</sup> Captain John Sibsey's collection was kept in the hall of his residence, an apartment which, in those times, frequently served as a family sitting-room, where books could be most conveniently arranged for use.<sup>5</sup> George Clayne, whose estate was appraised in 1654, owned a considerable number of volumes written in the Dutch language; among them a large Bible.<sup>6</sup> Of the six books belonging to Cornelius Lloyd's estate, three were of the same religious character.<sup>7</sup> The number embraced in the Yeardley inventory did not exceed nine titles, which would represent a collection perhaps of about twenty volumes.<sup>8</sup> The books belonging to the estate of Roger Fountain were entered at four hundred pounds of tobacco, an amount signifying,

<sup>1</sup> Lower Norfolk County Records, vol. 1646-51, p. 96.

<sup>2</sup> *Ibid.*, p. 126.

<sup>3</sup> *Ibid.*, p. 175.

<sup>4</sup> *Ibid.*, vol. 1651-56, p. 8.

<sup>5</sup> *Ibid.*, p. 54.

<sup>6</sup> *Ibid.*, p. 93.

<sup>7</sup> *Ibid.*, p. 168.

<sup>8</sup> *Ibid.*, p. 203.

at the rate of two pennies a pound, a valuation of fifty dollars.<sup>1</sup>

The collection of Col. William Moseley, also of Lower Norfolk, whose home was adorned with beautiful portraits, and whose family was in possession of much costly jewelry, was so large that, after his death, it was appraised at three thousand pounds of tobacco; this would represent in modern figures between three and four hundred dollars,—a valuation, however, which fails to give a perfectly accurate idea as to this collection's importance, whether the size or the character of its contents be considered, owing to the fact that very many of the books may have been in bad condition from age or use. Their extraordinary variety is indicated by the fact that they represented four languages, namely, English, Dutch, French, and Latin. Col. Moseley, although an Englishman in blood, had emigrated to Virginia from Holland, where he had acquired a thorough knowledge of the Dutch and French tongues; and, no doubt, he was made familiar with Latin by his early education.<sup>2</sup>

The number and the variety of the books often entered in an inventory at a comparatively small valuation, is strikingly illustrated in the case of the collection belonging to Mrs. Sarah Willoughby, a resident of Lower Norfolk, who died about 1673. Although appraised at only five pounds sterling, this collection contained fifty-five titles, which would indicate between one hundred and one hundred and ten volumes. Among the books of a religious character belonging to it were one Bible in folio and two in quarto, a

<sup>1</sup> Lower Norfolk County Records, Inventories for 1666. When new, these books were probably valued at three times this amount.

<sup>2</sup> Lower Norfolk County Antiquary, vol. i., p. 122.

Bible printed in the Latin language, two testaments, Eusebius's *Ecclesiastical History*, *Ye Soul's Progress to ye Celestial Canaan*, *Preservation against Sin*, a volume of sermons, an exposition of the Commandments, and also of the Lord's Prayer, a treatise on the Divine Essence and Attributes, *Cases of Conscience*, *Ye Safe Way*, *Ye Destruction of Babylon*, and *Wisdom in Three Books*. The fields of History and Biography were represented by the annals of Turkey, and the Lives of Louis the Thirteenth and Charles the Second. There were among the works of a more miscellaneous nature, Sandys's *Travels*, *Essays of Lord Montague*, *The Seaman's Practice*, *The Seaman's Calendar*, *The Birth of Mankind*, a volume on midwifery, *A Discourse for Englishmen*, a *Grammar and Dictionary*, a treatise on Trigonometry, Heyland's *Cosmography*, *Virginia or ye South Part of It*, *Propositions of War and Peace*, *Ye History of Animals*, *Directions for Planting Mulberry Trees*, and Æsop's *Fables*. Mrs. Willoughby also possessed a considerable number of books written in the Latin tongue, such as the *Metamorphoses* of Ovid, and other works by that author, the *Poems of Virgil*, and the *Orations of Cicero*; in addition, there were three small Latin books, and a book of Latin verses.<sup>1</sup>

The collection belonging to Thomas Reynolds, also a citizen of Lower Norfolk, who died about 1673, was almost entirely of a religious character; it included such standard works of that class as the *Practice of Piety*, and *The Whole Duty of Man*, volumes hardly less popular in the households of those times than the *Pilgrim's Progress* at a later day.<sup>2</sup> Among the books owned by William Green, of the same county, were

<sup>1</sup> Lower Norfolk County Records, vol. 1666-75, p. 169.

<sup>2</sup> *Ibid.*, p. 156<sup>2</sup>.

*Ye Civil Wars in England, Advice to a Son*, and the *Seaman's Practice*.<sup>1</sup> Edward Bragge, whose will was offered for probate about the same time, seems to have possessed only a few books.<sup>2</sup> On the other hand, the collection of Samuel Ball was quite large; it included nineteen works printed in English and bound in quarto or octavo, one in large quarto, perfectly new and very thick, and two in folio. There were also thirty small letter books, some bound in folio and some in quarto; in addition, there were four works in folio, and twenty-nine in quarto unbound; and finally, thirty-two English books, some bound in quarto and some in octavo. This collection consisted of one hundred and seventeen titles; if we omit the letter books from consideration, it is probable that it contained at least one hundred and fifty volumes. Its scholarly character is shown by the fact that thirty of the works were the productions of Latin authors.<sup>3</sup> The collection belonging to William Archer, who resided in Norfolk county, where he died about 1695, numbered as many as one hundred titles, which would probably represent a library equal at the least to one hundred and fifty volumes.<sup>4</sup>

<sup>1</sup> Lower Norfolk County Records, vol. 1666-75, p. 188.

<sup>2</sup> *Ibid.*, vol. 1675-86, p. 55<sup>2</sup>.

<sup>3</sup> *Ibid.*, vol. 1686-95, p. 155<sup>2</sup>; see also Lower Norfolk County Antiquary, vol. ii., p. 36.

<sup>4</sup> Norfolk County Records, vol. 1695-1703, p. 9. Among the other owners of books who resided in Lower Norfolk county were Thomas Casson or Causon (1651), Christopher Burroughs (1653), Henry Watson, Thomas Wilkes, Charles Edgerton, Thomas Hardinge, John Boote, John Lawrence (1666-70), Robert Porter (1666), Evan Williams (1673), William Simpson (1675), William Hanbrom (1678), Robert Spring, Geo. Fowler, James Wishart (1675-86), Tristram Mayo, William West (1684-5), William Daynes, Richard Wright, Francis Lake (1687-8), Walter Martin, Richard Jones (1691), John Sanford, Thomas Jackson, Francis Land, Henry Southern, Richard Stairling (1691-1700).

Perhaps, the largest number of books belonging to a citizen of Princess Anne county, a county formed by the division of Lower Norfolk about 1691, was the property of Thomas Cocke. It will be of interest to mention some of the titles of the works included in this collection, as they are fairly representative of many of the collections existing at this time:—among them were the *History of Great Britain*, *History of all the Kings of England*, *Defense of the Reformation*, *Observation of the Turk's Government*, *Voyages and Adventures of Sir Francis Drake*, *Travels of Ulysses*, *Jure Maritimo*, *Office of a Complete Attorney*, and *Complete Laws of Virginia*, *The Young Clerk's Guide*, *The Complete Justice*, *The Seaman's Calendar*, *The Nonconformist's Plea for Peace*, *Explanations of Proverbs*, *Greenhill's Sermons*, *Voice of the Rod*, *Fox's Time and the End of Time*, *Plain Man's Way of Worship*, *Divine Meditations*, *Schooling of the Untaught Bridegroom*, a large church Bible and three small testaments, a Book of Common Prayer, *Poorman's Family Book*, *Discourse concerning Comets*, and the *History of a Coy Lady*.<sup>1</sup>

The books belonging to Martha Williamson, also a resident of Princess Anne county, were, at the time the inventory of her personal estate was taken, valued at seven pounds and thirteen shillings, an amount which would indicate that her collection was about as large as Thomas Cocke's, already enumerated in part.<sup>2</sup>

The inventories recorded in Isle of Wight county in the interval between 1668 and 1679 contain entries which show that the principal citizens of that division of the Colony possessed respectively a considerable

<sup>1</sup> Princess Anne County Records, vol. 1691-1708, p. 162.

<sup>2</sup> *Ibid.*, p. 227.

number of books.<sup>1</sup> Sometimes, their collections are designated simply as "parcells,"—an indefinite term often signifying many volumes, as we learn from other sources of information. Such was the general description given to the collections of John Watson, John Long, and Francis Ayres, each doubtlessly varying in size greatly from the other two. The books owned by Robert Bracewell, who died about 1668, were valued at five hundred pounds of tobacco, an amount that, at two pennies a pound, would represent an appraisement of about one hundred dollars in modern values, indicating a large number of volumes, especially if they were in a damaged condition, as was the case so generally. Edward Yalden, who died in the following year, possessed seventeen books, and also two almanacs,—a collection perhaps of about thirty volumes. In the interval between 1679 and 1690, the principal owners of books residing in this county were John Bromfield, Thomas Pitts, Thomas Cullen, and John Jennings, whose joint collections were appraised at a figure exceeding eighteen hundred pounds of tobacco. The books belonging to Col. Joseph Bridger, perhaps the principal citizen of Isle of Wight county, were entered in the inventory of his personal estate at four pounds sterling; but this low valuation is explained by the fact that the volumes were for the most part in a dilapidated state. On the other hand, the collections of Captain John Goodrich and James Fullogh were appraised at seven hundred and four hundred pounds of tobacco respectively.<sup>2</sup>

Among the planters of Surry county owning a small

<sup>1</sup> For the names that immediately follow, see Isle of Wight County Records for the years of the Seventeenth century succeeding 1669.

<sup>2</sup> For Bridger, see Isle of Wight County Records, vol. 1661-1719, p. 255; for Fullogh and Goodrich see Records for 1698 and 1699.



number of books were Andrew Robinson, George Watkins, and Peter Dale; their joint possessions in this respect came to forty titles, which would perhaps indicate collections amounting in all to seventy or eighty volumes. One of the works belonging to Andrew Robinson's son was Quarles's *Poems*, a proof of some taste for belles-lettres. Robert Spencer, like Captain John Sibsey, of Lower Norfolk, already mentioned, arranged his books on shelves in the hall of his residence, probably his family's ordinary sitting-room. The number of titles amounted to seventeen, which would perhaps signify a collection of about thirty volumes.<sup>1</sup>

(Among the different articles carried off from the residence of Captain Chamberlaine, of Henrico, by Nathaniel Bacon's troops were several books,—a proof that, among the insurgents, there were some persons who possessed literary taste, whether disposed or not to recognise the rights of property.<sup>2</sup> Of the volumes belonging to the personal estate of Francis Eppes, one of the wealthiest planters of the same county, two were English dramas, while a third was the Bible in quarto containing the Apocrypha.<sup>3</sup> William Farrar, whose personal estate was valued at thirty-one thousand one hundred and five pounds of tobacco, owned a considerable collection of works; among them Dr. Sanderson's *Sermons*, Josephus's *History*, *The Commonwealth*, and *Legal Precedents*. The entire number were valued at only two hundred pounds of

<sup>1</sup> See Surry County Records:—Robinson, vol. 1645-72, p. 350, vol. 1671-84, p. 200; Watkins, vol. 1671-84 p. 72; Dale, *Ibid.*, p. 177, Spencer, *Ibid.*, p. 450, Va. St. Libr. Other owners of books in this county were John Twyford (1678), Edmund Howell, George Proctor, William Scarborough (1671-84).

<sup>2</sup> Henrico County Records, vol. 1677-92, orig. p. 30.

<sup>3</sup> *Ibid.*, p. 97, Va. St. Libr.

tobacco, but on the specific ground that they had fallen into a dilapidated condition from age and long use.<sup>1</sup> Among Farrar's other contemporaries residing in Henrico who possessed books were Captain James Crews,—a conspicuous figure in the troubles of 1676,—Richard Kennon, John Howard, Charles Clay, Thomas Bottomley, and Thomas Batte.<sup>2</sup> Thomas Shippey, whose personal estate was appraised in 1684 at nineteen thousand seven hundred and twenty-seven pounds of tobacco, possessed a collection amounting to twelve titles, or to about twenty-four volumes.<sup>3</sup> Nathaniel Hill, probably a physician by profession, left at his death, in 1690, among other books, ten bearing on the subject of medicine, two arithmetics, and a volume known as *The Clerk's Guide*. There were also in this collection two works printed in Latin.<sup>4</sup> The collection of Henry Randolph, long a prominent citizen of the county, contained twenty-nine titles in folio, eight in quarto, and more than fifty in octavo and duodecimo. The number of books belonging to him probably amounted to as many as two hundred volumes.<sup>5</sup> John Foisin, a merchant of French nativity, possessed at his death, in 1693, among other works, a collection of thirty-four printed in the French language; and his Bible was also printed in the same tongue.<sup>6</sup> The inventories of numerous citizens of the county at this time disclose the damaged condition of many volumes after passing through so many hands during a

<sup>1</sup> Henrico County Minute Book, 1682-1701, p. 10, Va. St. Libr.

<sup>2</sup> Henrico County Records, vol. 1677-92, orig. pp. 155, 226, 297, 379; vol. 1688-97, pp. 111, 235, Va. St. Libr.

<sup>3</sup> Henrico County Records, vol. 1677-92, orig. p. 282.

<sup>4</sup> *Ibid.*, vol. 1688-97, p. 182, Va. St. Libr.

<sup>5</sup> *Ibid.*, p. 428, Va. St. Libr.

<sup>6</sup> *Ibid.*, p. 463, Va. St. Libr.

long course of years; for instance, it was stated of Charles Blanchvile's collection that it consisted of a "parcell of very old books without beginning or ending,"<sup>1</sup> whilst those belonging to Francis Redford's estate were described as "old and imperfect."<sup>2</sup>

<sup>1</sup> Henrico County Records, vol. 1688-97, orig. p. 501.

<sup>2</sup> *Ibid.*, p. 492, Va. St. Libr.

## CHAPTER XV

### Libraries: Size of Collections (*Continued*)

NUMEROUS owners of books were found in all the counties situated in the Northern Neck from the first years following their settlement. In the interval between 1648 and 1653, there were included among such owners residing in Northumberland planters as well known as James Claughton, William Nicholls, John Dennis, and John Cocks.<sup>1</sup> The collection of Jane Porge, of the same county, who died about 1651, contained, in addition to three Bibles and a *Practice of Piety*, nine works printed in the Latin tongue.<sup>2</sup> The books belonging to Col. John Mottram, also of Northumberland, whose personality was appraised in 1655, related to a considerable variety of subjects,—among them were a *History of France*, a *History of Rome* written in the Latin language, a treatise on Wills and Testaments, the *Sergeant at Law*, *Statutes of Elizabeth*, Parry's *Chirurgery*, *Treatise on ye Law of God*, *Godly Observations*, *Parliament of Christ*, and *Differences between Religions*. In addition to these works, his collection contained thirty-nine titles representing volumes of a smaller size.<sup>3</sup> Among the owners of

<sup>1</sup> Northumberland County Records for 1648–53.

<sup>2</sup> *Ibid.*, Orders May 20, 1651.

<sup>3</sup> *Ibid.*, Orders July 4, 1655.

books residing in the same county whose collections are entered simply as "parcells," signifying a considerable or an inconsiderable number of works, were William Nash and Thomas Shaw.<sup>1</sup>

The collection of Richard Sturman, of Westmoreland, who died about 1671, seems to have contained about nineteen titles, which would perhaps indicate about forty volumes.<sup>2</sup> Among the books owned by John Annis, of the same county, whose estate was appraised the same year, were Norwood's *Epitome*, the publications of the French Academy translated, a *Description of the World*, Blunt's *Voyage into the Levant*, *Ye Glory of ye Church*, Clowes's *Care of Gunshot Wounds*, Cooke's *Anatomy*, French's *Art of Distillation*, *Vade Mecum*, *An Act for Subsidies*, and Wing's *Art of Surveying*.<sup>3</sup> In 1674, Robert Jadwin's collection consisted of eighteen works, but they were described in the inventory of his personal estate as old and dilapidated.<sup>4</sup> The collections of William Snowdall and Samuel Vaughan were entered in their inventories simply as "parcells of books."<sup>5</sup>

William Fitzhugh, who had enjoyed a superior education, was in the possession of the largest collection in the hands of any one citizen residing in Stafford county. That it contained an unusual number of volumes is shown by the term applied to it in the text of his will,—he there refers to it as a "Study of Books," which would seem to indicate that a special apartment was required to supply space for its accommodation.

<sup>1</sup> Northumberland County Records for July, 1657, also for 1671.

<sup>2</sup> Westmoreland County Records, Orders June 1, 1671.

<sup>3</sup> *Ibid.*, Orders April 17, 1671.

<sup>4</sup> *Ibid.*, vol. 1665-77, folio p. 189.

<sup>5</sup> *Ibid.*, Orders June 30, 1675, July 19, 1677.

Some light is thrown on the character of this "Study" by the various orders given by him in his correspondence with his London agents with a view to the purchase of such volumes as he desired; for instance, in 1698, he directed one of them to send him a copy of all the statutes passed since the twenty-second year of Charles the Second's reign, the second and third parts of Rushworth's Historical Collections, Dr. Thomas Burnett's *Theory of the Earth*, the complete works of the author of the *Whole Duty of Man*, Lord Bacon's *Remains*, Collins's *Abridgement of the Records of the Tower*, Buchanan's *De Jure*, Boyle's *Letter to a Friend concerning Specific Physic*, *Secret History of Charles the Second and James the Second*, *Secret History of Whitehall until the Abdication*, and the *Memorable Actions of King William the Third*. This brief list, which represents only a single order, reveals a certain breadth of literary interest very frequently reflected in the small libraries of that day, as the owners were entirely dependent upon their own collections whenever they had occasion to investigate any special subject strongly appealing to them. History, Law, Medicine, Physics, Morals,—there were works of high reputation in those times relating to each of these departments of thought in this comparatively small number of volumes dispatched on a single vessel to this planter and lawyer in Virginia.<sup>1</sup>

During the forty-six years between 1654 and 1700, the appraisement of personal estates in Lancaster shows the presence in that county of numerous collections of books; the term "parcells" occurs in at least twenty-five instances, and in some, if not in all, signified several dozen volumes at the lowest. William Brocas, who died about 1655, possessed an assortment made up,

<sup>1</sup> Letters of William Fitzhugh, July 21, 1698.

for the greater part, of works written in the Spanish, Italian and Latin tongues.<sup>1</sup> Robert Beckingham, a merchant of wealth and prominence, owned, in addition to other books, eight in folio, valued at a figure as high as three hundred and twenty pounds of tobacco, and one at eighty pounds. These volumes were probably adorned with costly illustrations.<sup>2</sup> Among the owners of small libraries who were Beckingham's contemporaries were Elias Edmonds, William Tignor, Thomas Hackett, David Miles, Walter Heard, Richard Taylor, and Thomas Wilks. An attachment issued against the personal estate of Dr. John Harris in 1683 included, as part of the property to be seized, fifteen "great and small books."<sup>3</sup> Col. John Pinkard, whose personal estate was valued at four hundred and seventy-six pounds sterling, seems to have possessed only four; and they were worth but a few shillings.<sup>4</sup> On the other hand, Colonel John Carter's collection contained a set of volumes remarkable, not only for their number, but also for the variety of the subjects to which they related; Religion, History, Law, Medicine, Physics, and Belles-lettres,—there were works in this little library touching upon some phase of each of these fundamental topics.

The names of some of Colonel Carter's books may be given in order to show the general character of one of the largest collections owned by any single planter of Lancaster county during the last quarter of the century. The department of History was represented by Rushworth's great work in its several parts, Plutarch's

<sup>1</sup> Lancaster County Records, vol. 1652-56, p. 203.

<sup>2</sup> *Ibid.*, Inventories for 1676.

<sup>3</sup> *Ibid.*, Orders April 11, 1683.

<sup>4</sup> *Ibid.*, Orders Jany. 8, 1690.

*Lives* and Josephus's *History of the Jews*; Science by Bacon's *Natural History*, Markham's *Country Farm*, Blith's *English Husbandry*, Booth's *Architecture*, Briggs's *Arithmetic*, Spencer's *Logic*; Medicine and Surgery by two works relating to chirurgery, by one relating to scurvy and dropsy, and one to the practice of physic, and also by Salmon's *Dispensatory* and the *Poorman's Family Book*; Religion by Diodati's and Haynes's *Annotations on the Bible at large*, Byfield's *Annotations on the Epistles of St. Peter*, Baxter's *Saints' Everlasting Rest and Life of Christ*, and also by his *Christian Directory* and *On Infidelity*, Newman's *Concordance*, Browning's *Sermons, Practice of Piety*, several Bibles, Testaments, and Common Prayer books. Among the dictionaries possessed by Colonel Carter were two English, one English-French, one English-Greek, and one English-Spanish. The department of general literature was represented in part by the Countess of Montgomery's *Urania*, Homer's *Iliad*, Ovid's *Epistles* translated into English verse, Ogilby's *Virgil*, also translated, *Cleopatra, a Romance*, *Cassandra, a Romance*, *Eikon Basilisk*, Markham's *Masterpiece*, and *Spanish and French Dialogues*. The entire collection was composed of fifty-five titles, which would indicate its numbering about one hundred volumes.<sup>1</sup>

The library of Ralph Wormeley, Secretary of the Colony, who resided at Rosegill, situated in Middlesex county, contained a collection of books amounting to as many as three hundred and seventy-five titles, which would probably signify that the number of volumes fell little short of six or seven hundred. An analysis of the titles shows that, in this collection, there were thirteen works relating to Grammar and the history of

<sup>1</sup> Lancaster County Records, Orders January 27, 1690-91.



words; thirty-three to Law and Politics; thirteen to Geography, and the description of places; eighty-six to History and Biography; twenty-two to Medicine; one hundred and twenty-three to Religion and Morals; four to Travels; five to Commerce; and twenty-three to various arts. On general subjects, there were fifty-five works, some printed in English and some in Latin; among the latter were copies of Virgil, Horace, Cicero, and other Roman authors equally celebrated. The English classics, including numerous comedies and tragedies, were also well represented. There were eighteen works printed in the French language. Among the other books which the library contained were thirteen standard dictionaries in the English, French, Spanish, and Latin tongues.<sup>1</sup>

The collection of books owned by William Colston, of Richmond county, amounted to one hundred titles; it contained perhaps as many as two hundred volumes; and it required for its accommodation the entire space of an alcove situated next to the chimney piece in the hall of his residence. This was known in the household as the "closet."<sup>2</sup> The collection belonging to Arthur Spicer, the foremost lawyer in the Northern Neck, who was also a resident of the same county, exceeded the Colston collection by two titles only. Naturally, the number of works relating to his profession predominated among the two hundred or more volumes which perhaps made up this library; at least fifty-two titles treated of the various sides of jurisprudence; and in addition there were six works devoted to History, and one to Biography. Thirty-five bore

<sup>1</sup> A complete list of the books forming the Wormeley Library will be found in *William and Mary College Quart.*, vol. ii., pp. 170-4.

<sup>2</sup> Richmond County Records for 1701; see also *William and Mary College Quart.*, vol. iii., p. 132.

upon religious and moral subjects, whilst among the remainder were copies of many celebrated Latin classics as well as copies of English.<sup>1</sup>

One of the earliest owners of books residing in Rapahannock county was James Williamson, whose personal estate was appraised in 1657, the year of his death; his collection at that time, which was described simply as a "parcell," was in a very dilapidated condition resulting from age and long use.<sup>2</sup> The collection of Dr. Henry Willoughby, a resident of this county about 1679, was so large that it would be regarded as a very respectable library even at the present time; the number of titles it contained amounted to at least two hundred; and it would probably not be an exaggeration to say that there were in it four hundred volumes in all. As works on Law predominated in Arthur Spicer's library, so in Dr. Willoughby's, works on Medicine occupied the first place; the number of titles relating to this subject alone came to forty-four; and of this number, one half at least were printed in folio and quarto. This collection of medical works represented the foremost treatises devoted to that science which had appeared up to this date; and in excellence was very probably quite equal to any collection owned by the English physicians of those times. It presents in a very favorable light the qualifications of the principal medical practitioners of Virginia in that age. This library, like Arthur Spicer's, also contained a very large number of books bearing upon the subject of Religion and Morals, a feature characteristic of every important collection found in

<sup>1</sup> Richmond County Records for 1701; see also *William and Mary College Quart.* vol. iii. p. 132.

<sup>2</sup> Rapahannock County Records, vol. 1656-64, orig. p. 77.

the Colony during this century. Of this section of Dr. Willoughby's collection, two works were printed in folio, twenty in quarto, twenty-seven in octavo, and twenty-five in duodecimo. Nor was his library lacking in works relating to the different branches of Law; on the contrary, there were thirty-eight separate titles devoted to this general topic in its various aspects; and of these, two were printed in folio, four in quarto, nine in octavo, and twenty-three in duodecimo. In the department of History, there were six works printed in folio, and twelve in quarto. Twenty-eight of the titles related to subjects of general interest; and these included copies of many classical authors.<sup>1</sup>

Among other owners of books residing in Rappahannock county during the interval between 1677 and 1685, were Thomas George and Thomas Perkins; the volumes owned by the latter, who is entered in the records as "clerk," signifying that he was a clergyman, were appraised at nearly twelve hundred pounds of tobacco. Additional owners were Major Henry Smith (whose books were kept in his bedroom), Evan Morgan, Thomas Harper, John Gilson, William Fauntleroy, John Palmer, James Andrews, and George Jones.<sup>2</sup> John Sampson, a merchant, who died about 1680, possessed, among other works of value, Browne's *Religio Medici*, a very popular volume in the Colony among men of literary taste, Quarles's *Fons Lacrymarum*, and *Heaven Opened*, a religious book appearing in nearly all the libraries of those times. Powell's *Concordance*, which was also owned by Sampson, was equally as well known. His collection also included such other works of a moral tone as *Heart Kept from Desponding*, *Of Friendship and*

<sup>1</sup> Rappahannock County Records, vol. 1677-82, orig. p. 25.

<sup>2</sup> *Ibid.*, pp. 19-83.

*of a Friend, Of the Proverbs, and Divine Fancies.* Among its contents too was a French grammar, and also numerous copies of the laws of Virginia. And like most of the colonial libraries of that day, it contained *The Seaman's Calendar* and the *Poorman's Family Book*.<sup>1</sup>

The collection belonging to the Debers estate, of Rappahannock, included, along with other works, eight written in the Latin tongue, apparently copies of celebrated Roman authors. There were also three volumes of sermons printed in quarto, besides numerous small volumes relating to subjects of general interest.<sup>2</sup> Among the other owners of books residing in Rappahannock, or in Essex, a county formed from Rappahannock towards the end of the century, were Thomas Roberts, William Sergeant, Christopher Blackburne, Anthony and John Smith, Martin Johnson, and Robert Jackson.<sup>3</sup>

<sup>1</sup> Rappahannock County Records, vol. 1677-82, orig. p. 61.

<sup>2</sup> *Ibid.*, p. 50.

<sup>3</sup> *Ibid.*, pp. 6, 7, Va. St. Libr.; Essex County Records, vol. 1692-95, pp. 315, 373, 401, Va. St. Libr. See also Records for 1696, orig. p. 47; also Orders Sept. 22, 1698.

## CHAPTER XVI

### Libraries: Size of Collections (*Continued*)

PASSING from these communities, which for the most part had been occupied by English settlers barely fifty years, to such counties as Accomac, Northampton, and York, first seated not long after the Colony's foundation, we discover even more remarkable evidences of the fact that, during the Seventeenth century, many Virginians were in possession of a large number of well selected volumes. Let us examine first the inventories of Northampton and Accomac, the two counties forming what has always been designated as the Eastern Shore. As early as 1641, the appraisement of the Cugley estate showed among its items of property a "parcell of old books," a term which, as already pointed out, often indicated a collection of some importance.<sup>1</sup> Dr. John Holloway possessed, in addition to thirteen works relating to the subject of chirurgery, written in either Latin or English, twenty bearing upon a great variety of topics of general interest; among them a Greek Testament in folio, bequeathed by him, as we have seen, to his friend Rev. John Rosier.<sup>2</sup> John Severne's collection, like the Cugley, was entered

<sup>1</sup> Accomac County Records, vol. 1640-45, pp. 59, 65, Va. St. Libr.

<sup>2</sup> Northampton County Records, Orders Aug. 31, 1643; Feb. 10, 1643-44.

in the inventory of his personal estate simply as a "parcell of books," but probably amounted to a considerable number of volumes. The collection of Philip Chapman, on the other hand, was in such a torn and dilapidated state that it was declared to be in part mere "pieces of books"; in addition, however, he owned eleven works in a very fair condition.<sup>1</sup> Among other owners of collections living previous to 1650 were Martin Rennett and William Berryman. Henry Pedinton, whose estate was appraised about 1647, was in possession of a large number of religious books. The collection of Mrs. Jane Lemman did not exceed twenty titles; and George Clarke's, twenty-six. Both of these persons died about the same time as Pedinton.<sup>2</sup> The collection belonging to William Penley included a *History of Turkey*, Stowe's *History or Chronicle*, and the *King's Meditation*.<sup>3</sup> One of the apartments in Peter Wilkins's residence was designated as the "Study," and here his books, consisting chiefly of works on Divinity and History, were carefully arranged on shelves.<sup>4</sup>

Owing to the presence on the Eastern Shore of numerous citizens born in Holland, it is no cause for surprise to find that, among the works forming the libraries in that part of the Colony, there were very many written in the Dutch language. Lawrence Jacobson, who died in 1666, owned about thirteen books of different sizes, bearing on different subjects, printed in this

<sup>1</sup> Northampton County Records, Orders, January 7, March 1, 1644-45.

<sup>2</sup> *Ibid.*, Pedinton, Orders April 5, 1647; Lemman, Orders March, 1649; Clarke, Orders April 16, 1650; Rennett, Orders May 12, 1648; Berryman, Orders June 28, 1648.

<sup>3</sup> Northampton County Records, 1651-54, p. 9.

<sup>4</sup> *Ibid.*, vol. 1654-55 p. 110.

tongue.<sup>1</sup> The collection of Dr. George Nicholas Hack, a leading physician of Accomac county, but a native of Cologne, consisted for the most part of works written in either the low or high German dialect. Eight of these were printed in folio, two in quarto, and twelve in octavo. At least fifty-four of the books belonging to this library were written in the Latin tongue. Seventeen of these volumes were printed in quarto and large octavo, whilst the remainder were printed in smaller sizes. A considerable proportion of the collection was written in English.<sup>2</sup> Among the books making up Colonel Southey Littleton's collection were Æsop's *Fables*, two works in the Latin language, Dr. Sanderson's *Sermons*, *Ye Difference of Sacraments*, *Body of the Common Law*, *Laws of Virginia*, *History of the New England War*, *Doctrine of Triangles*, and the *London Dispensary*.<sup>3</sup>

The collection of Charles Parkes, a resident of the same county, contained a large number of volumes: it included, among other works, fifteen relating to Theology alone, the majority of which were printed in octavo; and there were besides, eleven titles confined to historical subjects. The number of volumes bearing upon different phases of the two great topics, Divinity and History, probably came to as many as fifty, or even more. Two of the most interesting works

<sup>1</sup> Northampton County Records, vol. 1664-74, folio p. 34.

<sup>2</sup> *Ibid.*, Orders April 17, 1665; Accomac County Records, vol. 1664-71, p. 29. Deposition of John Nelson: "I being in his ye sd Capt. George Nicholas Hack's house in a room where there was a bedstead and a table in the sd room, there was two or three London Gazettes lay on the sd table, and this deponent took one of them into his hand"; see Accomac County Records, vol. 1682-97, p. 172.

<sup>3</sup> Accomac County Records, vol. 1676-90, p. 295.

belonging to this collection were Speed's *Chronicle*, and the *Travels of Sir Francis Drake*. Parkes followed the gunsmith's calling, but must have been a man with a strong taste for literature.<sup>1</sup> Among the personal property of Edward Bibbe, also of Northampton county, appraised after his death, was a collection of sixteen books; and of Captain William Kendall, thirty-one, besides a volume relating to Law. The collection of George Dewey was entered in his inventory simply as a "parcell of books," which gives no distinct indication as to the number of volumes.<sup>2</sup>

The county of York, as one of the wealthiest in the Colony, included among its inhabitants numerous owners of books. As early as 1645, Richard Watson, a citizen of this county, was in the possession of a collection amounting to thirty titles in folio, and fifty in quarto, with perhaps copies of other works published in smaller sizes. This library probably contained as many as two hundred volumes.<sup>3</sup> Among the contemporaries of Watson owning collections were Richard Winne, Geo. Hopkins, William Kellaway, and Thomas Deacon.<sup>4</sup> John Eaton, who died about 1646, leaving a personal estate valued at twenty-seven hundred and two pounds of tobacco, transmitted to his heir "a Bible and other books."<sup>5</sup> The collection of Giles Mode, whose personal property was appraised about ten years later, was entirely composed of works

<sup>1</sup> Northampton County Records, vol. 1692-1707, p. 131.

<sup>2</sup> *Ibid.*, Inventories for 1696, 1697; see also vol. 1689-98, p. 499.

<sup>3</sup> *William and Mary College Quart.*, vol. iii., p. 181.

<sup>4</sup> York County Records, vol. 1638-48, p. 276, Va. St. Libr.; see also Records for the years 1645 and 1648.

<sup>5</sup> York County Records, vol. 1638-48, p. 137, Va. St. Libr.



written in the Dutch language.<sup>1</sup> One of the entries in the inventory of Hugh Stanford, whose death occurred about the same time, was an item of "twelve or thirteen small books."<sup>2</sup> John Brodnax's collection contained about the same number; and this was also true of the collection of Charles Kiggin.<sup>3</sup> Among other owners of books residing in York county about 1658, were John Gosling, Roger Lewis, Stephen Page, Philip Stevens, and John Heyward.<sup>4</sup> That such owners were often generous in lending to their neighbors volumes of unusual interest was shown by an order of court of this date requiring the guardians of Edward Johnson to return to Mr. Thomas Loving the copy of St. Augustine's works which Johnson's father had borrowed.<sup>5</sup> The collection of Thomas Ludlow, who died about 1660, was, in the inventory of his estate, appraised at two hundred and fifty pounds of tobacco.<sup>6</sup> A somewhat higher valuation was placed on Robert Clarke's, as it contained, among other volumes, two copies of works published in a very large shape.<sup>7</sup> Among the principal owners of books residing in the county between 1665 and 1667, were Jeremiah Fisher, John Thomas, George Morris, Thomas Whitehead, and William Hughes. One of the titles belonging to Hughes's collection was *Dr. Taylor's Book*, which was probably the sermons of the famous clergyman of that name.<sup>8</sup>

<sup>1</sup> York County Records, vol. 1657-62, p. 60, Va. St. Libr.

<sup>2</sup> *Ibid.*, p. 61, Va. St. Libr.

<sup>3</sup> *Ibid.*, p. 80, Va. St. Libr.

<sup>4</sup> *Ibid.*, pp. 60, 94, 116, 247, 348, Va. St. Libr.

<sup>5</sup> *Ibid.*, p. 90, Va. St. Libr.

<sup>6</sup> *Ibid.*, p. 275, Va. St. Libr.

<sup>7</sup> *Ibid.*, p. 153, Va. St. Libr.

<sup>8</sup> York County Records, vol. 1664-72, pp. 24, 77; Records, vol. 1671-94, p. 25; vol. 1657-62, pp. 212, 398, Va. St. Libr.

One of the largest collections of books in York county during the latter half of the Seventeenth century was owned by Matthew Hubbard, whose personal estate was appraised at his death in 1667; it contained numerous works relating to various departments of thought—among them, for instance, in Belles-Lettres, Ben Jonson's *Remains* in folio, *Astrea, a French Romance*, Donne's *Poems* and Æsop's *Fables*; in Travels, the works of Captain John Smith and Purchas's *Pilgrimage* in folio; in Religion and Morals, a Latin Bible in quarto, Prynne's *Against the Prelacy, Exposition of the Commandments*, Young's *Antidote against Grief, Divine Fancies, Advice to a Sonne, God a Good Master, Practice of Piety, Boanerges and Barnabas, Christ Set Forth, Latin Common Prayer*, and *Miscellany of Prayers*; in Medicine, Riverius's *Book of Physic, Physician's Library* in folio, Culpeper's *Dispensatory and Anatomy* in folio, and the *Institution of Physick*. Among the works relating to subjects of a more general character were Reder's *Dictionary, French Accidence, Swedish Intelligencer*, and *Tutor to Astronomy*.<sup>1</sup>

Although this collection, according to the inventory, contained "thirty-one titles with other old books," probably as many as seventy or a hundred volumes in all, a large proportion of which, as will be seen by the enumeration, were works of literary value, nevertheless the whole was appraised at a figure so low as two pounds and ten shillings, a proof of the correctness of our previous statement that a valuation of this kind was based wholly on the books' physical condition, and was, therefore, in itself no real indication either of their number or their literary importance. The inference is irresistible that where a collection's valuation only is

<sup>1</sup> York County Records, vol. 1664-72, p. 464, Va. St. Libr.

recorded, the collection itself was generally much larger and more choice intrinsically than the appraisement would lead one to suppose.

Among the owners of books residing in York about 1670 were William Grimes, Adam Miles, Joseph Croshaw, Nicholas Bond, and James Moore.<sup>1</sup> The collection of Paul Johnson numbered seventeen titles. John Baskerville possessed works in English valued at three pounds sterling, and in Latin at one pound; this would represent an appraisement of one hundred dollars in modern figures, which would indicate a collection of some importance.<sup>2</sup> In the collection of Richard Stock, who died about 1671, there were two volumes relating to the life of Cleopatra.<sup>3</sup> Among the items appearing in the inventory of Jonathan Newell's personal estate were "sixty-three books of several sorts," which would point to a library of about one hundred and twenty volumes.<sup>4</sup> The collection owned by Captain Francis Matthews, who died in 1674, amounted to thirty-two titles, or probably to sixty volumes in all.<sup>5</sup> Richard Croshaw, whose death occurred a few years later, possessed a collection of fifteen titles in a well preserved condition, whilst the remainder, valued at two pounds sterling, were described in his estate's appraisement as being merely a "parcell of old books." If we follow the analogy of the Hubbard collection, the number of titles belonging to Mr. Croshaw fell little short

<sup>1</sup> York County Records, vol. 1664-72, p. 277; vol. 1662-74, pp. 290, 401, 445, 448, 543, Va. St. Libr.

<sup>2</sup> *William and Mary College Quart.*, vol. iii., p. 181.

<sup>3</sup> York County Records, vol. 1664-72, p. 532 Va. St. Libr.

<sup>4</sup> *Ibid.*, vol. 1675-84, orig. p. 140. Newell also left at his death a "parcel of pictures of several sorts and sizes and six oyle pictures."

<sup>5</sup> York County Records for 1674, see vol. 1671-94, p. 186, Va. St. Libr.

of fifty-five, an indication that his library amounted to about one hundred volumes.<sup>1</sup> Dr. Francis Haddon, Croshaw's contemporary, left at his death two "parcells of books," one of which was composed of works printed in English, and one of works printed in Latin.<sup>2</sup> Other owners of books residing in the county at this time were Nicholas Toop, Elizabeth Bushrod, and William Allen.<sup>3</sup> The collection belonging to James Vaulx, who died in 1678, was valued at one pound and ten shillings, whilst that of Robert Spring, who died five years later, was valued at one pound and twelve shillings. Each of these collections was in a torn and decayed state; both probably contained one half as many volumes as the Hubbard library, if an inference can be drawn from the total amount of their respective appraisements. This would represent about twenty-five titles, or fifty volumes.<sup>4</sup>

The number of books forming a part of the personal estate of Capt. John Underhill, a prominent citizen of York county, was appraised, in 1682, at fifteen pounds sterling; which represented a collection at least seven times more valuable than the Hubbard; and, following the analogy of the latter, amounted to about two hundred, or even to two hundred and fifty, titles, making up a library that fell little short of four hundred volumes. In purchasing value, fifteen pounds sterling was the equivalent of at least three hundred dollars; a library containing a large proportion of old and hand-worn books must have been of an unusual size to have been set down at so high a figure.<sup>5</sup> The

<sup>1</sup> York County Records, Inventories for 1677.

<sup>2</sup> *Ibid.*, vol. 1671-94, p. 99, Va. St. Libr.

<sup>3</sup> *Ibid.*, Inventories for 1678, 1679, 1681.

<sup>4</sup> *Ibid.*, Inventories for 1678, 1683.

<sup>5</sup> *Ibid.*, Inventories for 1682.

collection of James Goodwyn, who died in 1678, was valued at one pound, five shillings; Mrs. Elizabeth Digges's, independently of her great Bible, at four pounds sterling; Henry Power's at five pounds; and James Whaley's at three pounds and seven shillings. These four persons were in possession of books appraised as a whole at fifteen pounds sterling, a sum which would seem to indicate that their joint collections contained at least two hundred titles or four hundred volumes.<sup>1</sup> The library belonging to Robert Booth was appraised at nearly the same figure.<sup>2</sup>

How many books were contained in a collection entered in an inventory as worth fourteen pounds is shown by the number belonging to Henry Sandford, which were appraised at only five pounds and eleven shillings; according to the description of his personal estate, there were "in one trunk, twenty-five English books valued at one pound and fifteen shillings; twenty-three Latin and Greek books, and a parcel of unbound books, valued at one pound and ten shillings; a Greek New Testament and five Hebrew books, valued at one pound and four shillings." Here were fifty-four titles, representing probably a hundred volumes, and many of them, no doubt, the works of the great Latin and Greek authors, which, owing to the books' physical condition, were appraised at only four pounds and nine shillings, a sum not exceeding one hundred dollars in purchasing power. In addition, there was a "parcell of old books" appraised at twelve shillings, and also a volume printed in quarto. A volume bearing the name: *An Essay towards the Amendment of ye last English Translation*

<sup>1</sup> *William and Mary College Quart.*, vol. iii., p. 246.

<sup>2</sup> York County Records, vol. 1687-91, p. 380, Va. St. Libr.

of *Ye Bible*, completed the number.<sup>1</sup> Following the analogy of this collection, Robert Booth's library, valued at fourteen pounds sterling, contained not less than three hundred volumes. Among his contemporaries residing in York who were in possession of numerous books were John Keene, Capt. Charles Hansford, Nicholas Sebrell, Susannah Perkins, James Archer, Robert Dobbs, John Wooding, and Andrew Geddes.<sup>2</sup>

The surviving records of Elizabeth City county cover only the last few years of the Seventeenth century and yet their entries show the presence, in that century, during this short period, of numerous owners of books. A part of the collection belonging to William Marshall consisted of "ye Map of the World and four lesser Maps," whilst Isaac Malyn's collection included several volumes in the Dutch language.<sup>3</sup> Simon Hollier possessed a set of the Virginia Laws, and also fifteen "printed books." The collection of Edmund Swaney was described simply as a "parcell of books old and new." Other owners of small libraries who resided in this county at this time were John Powers, Thomas Holland, and Thomas Allamby.<sup>4</sup>

Such is a brief account of some of the most important collections of books belonging to citizens of the Colony during the Seventeenth century. The list is far from being a complete one even for those counties the records of which were not destroyed during the storms of War and Revolution that have so often swept over Virginia.

<sup>1</sup> *William and Mary College Quart.*, vol. iv., p. 15.

<sup>2</sup> York County Records, vol. 1690-94, pp. 359, 407, 409, Va. St. Libr. See also Inventories for 1697 and 1698.

<sup>3</sup> Elizabeth City County Records, vol. 1684-99, pp. 299, 317, Va. St. Libr.

<sup>4</sup> *Ibid.*, pp. 302, 310, 314, Va. St. Libr.

Only about one hundred and thirty volumes of these records remain intact where originally there were probably not less than five hundred or even one thousand volumes. With the exception of Henrico and Elizabeth City (and possibly also of Warwick and Charles City), whose records have been only partially preserved, not a single county contiguous to the east bank of James River below Richmond, the first division to be seated, can show a page of legal papers belonging to this century.<sup>1</sup> All the colonial records of Nansemond, New Kent, and Gloucester counties have perished; and so with those of a wide area of country along the upper tributaries of the York River which played a great part in the early history of the Colony. Therefore, even if a full list of all the owners of books in Virginia during that period, whose names and the size of whose collections could be obtained from the surviving records of the century, were given, it would not represent perhaps one fifth of the persons then in possession of such collections. I have gleaned from the records which have come down to the present times sufficient evidence at least to show that there were many owners of books in each county; and that the whole number of books to be found in the Colony amounted to many thousand volumes. It would, I think, be strictly within the bounds of accuracy to say, as a reasonable inference from facts already brought forward, that the number of collections, large or small, existing in the last quarter of the century fell little short of a thousand; and estimating such collections at

<sup>1</sup> If any records of the century survive in Warwick or Charles City County, they are contained in a single stray volume, which perhaps has been returned after having been carried off to the North in the great War of 1861-65.

an average of twenty volumes, a figure too low rather than too high, it would probably be no exaggeration to assert that the number of volumes composing these collections, as a whole, exceeded twenty thousand. It should, however, be borne in mind that copies of certain popular books appeared in every collection of importance, which would serve to diminish the number of separate titles.



## CHAPTER XVII

### General Culture

THERE are several unmistakable indications that a high degree of culture prevailed among the members of at least a section of the upper planting class.<sup>1</sup> As we have seen, a very considerable proportion of the books composing the libraries of the Seventeenth century were written in the Latin and Greek languages, and were copies of the most celebrated of the ancient classics. There is no reason to think that these works were preserved simply for ornament or ostentation; rather every probability points to the fact that they were read and studied. It should be remembered that a very large number of the citizens

<sup>1</sup> Writing of England in the Seventeenth century, Macaulay states that "few knights of the shire had libraries so good as may now be perpetually found in a servants' hall or in the back parlour of a shop-keeper. An Esquire passed among his neighbours for a great scholar if Hudibras or Baker's Chronicle, Tarlton's Jests and the Seven Champions of Christendom lay in his hall window among the fishing rods and fowling pieces"; *History*, Chapt. iii. Again he writes: "Many Lords of Manors had received an education differing little from that of their manual servants. The heir of an estate often passed his boyhood and youth at the seat of his family with no other tutors than grooms and gamekeepers and scarce afterward learning enough to sign a mittimus. If he went to school or college, he generally returned before he was twenty to the seclusion of the old Hall, and there, unless his mind was very happily constituted by nature, soon forgot his academical pursuits in rural business and pleasures." See *History*, Chapt. iii.

of Virginia during this century were men like Richard Lee, the elder Nathaniel Bacon, John Page, William Randolph, the elder Robert Beverley, William Fitzhugh, and hundreds of others of almost equal prominence, who not only had been born in England, but had acquired in the institutions there the learning that would enable them to read the works of the great Latin and Greek authors with facility. These authors were perhaps more familiar to the Virginians of these early times than they are to the Virginians of the present day, in spite of the wider range of modern culture. At that period, when the collections of books were comparatively small, each volume was perused with more frequency, and its contents were more thoroughly mastered; it is this fact which largely accounts for the dilapidated condition distinguishing so many of these collections at the time of their appraisalment. Read and reread, the classical works of Greece and Rome became a part of the daily lives of those whose learning enabled them to enjoy the unequalled beauties of these ancient writers. Nor did the character of the collections of books in this century, when regarded from other points of view, show any inferiority of literary taste; not only were the volumes relating to History and Biography, and Belles-lettres proper, very numerous in every important library, but there was also an extraordinary number of volumes bearing upon moral subjects in general, one of the very highest departments of thought which can engage the attention of the human mind.

Apart from the presence of so many well chosen books, the surviving letters of the foremost Virginians of the Seventeenth century prove that they possessed no small degree of culture. The letter books of two alone,

William Fitzhugh and the elder William Byrd, have come down to us in their original shape. Although they are but copies, and were thrown off hurriedly, or at least without any view to their permanent preservation as casting a vivid light on that remote past, nevertheless, they form admirable examples of the kind of correspondence,—the purely business,—to which they belong. There are found scattered through the county records a number of casual letters written by citizens of the Colony, showing their authors to have been men who had enjoyed the fairest opportunities for education which that age afforded. There is, for instance, entered in the records of Accomac, for the year 1636, a letter from Samuel Mathews's pen which is vigorous and direct in thought and clear and strong in style.<sup>1</sup> A letter from Susan Moseley to Capt. Francis Yeardley, now preserved among the records of Lower Norfolk, is admirably expressed for the time<sup>2</sup>; and so are all the letters addressed to his relatives in England by Hugh Yeo, who resided on the Eastern Shore.<sup>3</sup>

Among the records preserved in the British Public Record Office in London, there are numerous communications (some of which are in the form of ordinary letters) written by Virginians of the Seventeenth century. Two of these may be specially mentioned as fair examples of the others. One, a letter from Charles Scarborough dated June 16, 1682, and penned in Accomac, is not only correctly spelt, so far as any fixed standard existed at that time, but also clearly and even

<sup>1</sup> Accomac County Records, vol. 1632-40, p. 50, Va. St. Libr.

<sup>2</sup> Lower Norfolk County Records, Orders Nov. 10, 1652; Lower Norfolk Antiquary, vol. ii., p. 122.

<sup>3</sup> Accomac County Records, vol. 1678-82 p. 124 et seq.

gracefully expressed.<sup>1</sup> Far more remarkable, however, was the letter which Benjamin Harrison wrote, in 1698, to the English authorities touching the supposed inefficiency and fraudulency of the collectors of customs in performing the duties of their office. Harrison himself had been accused by Col. Daniel Parke of conveying a cargo of tobacco to Scotland without first securing the necessary clearance papers. Smarting under this charge, he expressed himself, in his recrimination, with a clearness, directness, and trenchancy, not equalled in many documents of the same kind belonging to that age. The significance of this letter seems the more striking from a purely literary point of view when it is recalled that Harrison was a native of Virginia, and that he had received his entire education in the schools of the Colony. The choiceness and copiousness of his language, the artfulness he showed in arranging his matter, and the strength and eloquence he imparted to his denunciations,—all bear the most impressive testimony to the superior literary training which he had obtained without finding it necessary to seek an education in the institutions of the Old World.<sup>2</sup>

The second Robert Beverley was also a native of Virginia, and so far as the records show, received his early education in its schools. His *History* is one of the most admirable specimens of historical writing produced in any of the English Colonies, whether we consider it from the point of view of its literary expression, arrangement, or power of thought. Its atmosphere is pervaded by the freshness to be expected of an author describing a community still close to all

<sup>1</sup> British Colonial Papers, vol. xlviii., No. 106.

<sup>2</sup> B. T. Va. 1698, vol. vi., p. 303.

the primeval forms of Nature; and the book also breathes a spirit of quiet and lurking humor that gives a glow to its driest statement of facts.<sup>1</sup> William Fitzhugh, who was fully competent to carry out such a purpose, designed at one time to write an account of Virginia,—its people, climate, soil, history, and the like, but his intention, probably owing to the interference of his numerous interests, remained unrealized.<sup>2</sup> If a similar ambition ever arose in the breasts of other Virginians, it passed with the same lack of practical results.

There is no evidence that any work of imagination was produced in the Colony during the Seventeenth century; the nearest approach to such a work were the felicitous translations of Ovid's *Metamorphoses*, and the First Book of the *Æneid*, made by George Sandys on the banks of the James about the time the frightful massacre of 1622 occurred. There is a touch of pathos in the fact that the accomplished Treasurer found consolation for all the horrors of that event, and some relief perhaps for his longing as a scholar, in turning these great Latin writers into verse in the shade of the primeval oaks and within the sound of the whispering waters of that beautiful wilderness. As he dropped for a moment his poetical task, his mind may well have speculated as to the fountains from which the great stream flowing at his feet had sprung, and the mysterious forests, haunted by red men, wild beasts, and birds alone, through which it had glided down for immemorial ages. The world of Ovid and Virgil was another world, not simply in time but in place.

<sup>1</sup> Beverley is not known to have been the author of any other work.

<sup>2</sup> Letters of William Fitzhugh, May 13, 1687.

The situation and the surroundings of their translator, they, with all their power of divination, could not have conceived of; and it was well that, with the savage's cry still echoing in his ear, he had so noble a work to absorb his energies and divert his thoughts.

The public Declarations of Parliament in the most stirring years of the Seventeenth century were not finer, either in spirit or expression, than some of the Declarations issued by the Virginian House of Burgesses during the course of the same period. For elevation, eloquence, and keen argumentative force, few public papers of that period equal or surpass the Declaration of 1651, in which the General Assembly protested against the Act of Parliament prohibiting all commercial intercourse between the Colony and other countries. Many of the reports made by the Governors and Councils in the form of letters to the English authorities are among the most admirable public documents of that time; nor was such excellence confined to those emanating from the Colony's highest officials; in the long series of grievances presented, at the request of the English Commissioners, after the suppression of the rebellion of 1676, by the greater number of the counties, we have a collection of public papers penned by local committees, which in force and clearness of expression, in weightiness and propriety of statement, and dignity and earnestness of spirit, bear witness in the most unmistakable manner to the character, ability, and acquirements of the writers, who were drawn apparently indiscriminately from the great body of the population.

There is practically no evidence whatever of illiteracy among the men who, from decade to decade, during the Seventeenth century, directed the political affairs of

Virginia. A careful personal examination of the hundreds,—it might be even said,—the thousands of original communications to the English Government from the authorities of the Colony, now preserved in the British Public Record Office in London, has failed to disclose to me a single case of an official, who, being unable to attach his name in full, was compelled to make his mark; and this is as true of the communications signed by the House of Burgesses as of those signed by the Governor and Council. A remarkable corroboration of this statement will be found in letters to the English authorities resembling the one despatched in 1624; thirty-one signatures, including that of every member of the General Assembly, were appended to this document; each name was not only signed in full, but also written down in an easily legible hand.<sup>1</sup>

Among the great number of justices occupying seats on the county court bench, I have noted in the surviving records of these courts only four who were in the habit of signing legal papers by making their marks. These men were Thomas Curtis, of Gloucester county, Thomas Batte of Henrico, Arthur Allan, of Surry, and a member of the Keeling family of Lower Norfolk.<sup>2</sup> It is not certain, however, that they made their marks merely because they were ignorant of how to write; it is not improbable that they were prevented from signing their names by some physical infirmity rendering their hands useless. Batte was not only a man in possession of a good estate, but also, as the son or grandson of a graduate of Oxford University, had,

<sup>1</sup> British Colonial Papers, vol. iii., 1624-25, No. 4.

<sup>2</sup> Curtis, *William and Mary College Quart.*, vol. ii., p. 163; Batte, Henrico County Records, vol. 1677-79, orig. p. 275; Allan, Surry County Records, vol. 1645-72, p. 207, Va. St. Libr.

from his youth, been accustomed to hold education in high esteem. This was shown by the fact that his own son was able to write, as we learn from the county records. Allan was, for many years, the most prominent citizen of Surry county, and among the wealthiest planters residing there. He, like Batte, belonged to a family that had enjoyed every social and intellectual advantage. Justice Keeling was not the first or last of his family to play a leading part in the public service of Lower Norfolk; and if he had been permitted to grow up without acquiring the art of writing, it was due to no lack of wealth, or fine social and intellectual traditions in the circle of his home. If these men of gentle descent, in the enjoyment of large estates, and occupying positions of great influence in their counties, were really unable to write, not because of physical infirmity, but from naked ignorance, then they constituted remarkable exceptions to the great body of persons performing the same judicial functions.



## CHAPTER XVIII

### Degree of Illiteracy

**I**T is no fair test of the degree of illiteracy prevailing in the Colony to compare the number of wills signed with the full name with the number signed with a mark alone. An examination of the county records will show that an extraordinary proportion of the wills were entered in the books very soon after they were drawn. The shortness of this interval in so many cases is an indication that the testators were, as a rule, in such an advanced state of illness at the time the documents were written that their deaths followed very quickly; mere physical weakness must, therefore, in the course of a century have prevented many hundreds from doing more than attaching their marks to their last testaments; and they were perhaps only capable of performing even this simple act with the assistance of those standing by their bedsides. In the light of these probabilities, I have not considered it safe to base an extended estimate of the literacy and illiteracy of the Virginian people, during the Seventeenth century, on the number of wills found in the county records signed with the full name as compared with the number signed with a simple mark only. I have confined my calculations to the relative number of signatures and marks attached to deeds of conveyance, depositions, and jury inquests alone. The informa-

tion obtained by means of the inquests and depositions is perhaps more valuable even than that obtained from the conveyances. The conveyances indicate the degree of literacy or illiteracy prevailing in the circle of property owners only, among whom, owing to their possession of means to meet the cost of an education, the degree of illiteracy is apt to have been smaller than among any other section of the community. The landholders were the class most favored by fortune; and their condition, in any one respect, could not be taken as shared by persons less happily situated in the matter of estate. On the other hand, the witnesses in courts whose depositions are recorded, were drawn from every class, except the slaves, forming the social and political body of the Colony. The foremost men in the community as well as the humblest and most obscure, the richest and poorest alike, appeared in this character in court; and an estimate of the number of such signing the depositions in full, or with a mark, would reflect very fairly the degree of literacy and illiteracy prevailing among the people at large, irrespective of their possessions. This is also true of an estimate based on the signatures in full and marks attached to the jury inquests; except that here we would have to exclude from the calculation the agricultural servants as well as the slaves. Every grade of freemen, however, were represented on these juries. The juries whose verdicts (with the signatures in full or marks of the jurymen appended) were most frequently placed on record, were those which had decided some dispute respecting title to land, or had met at the coroner's call to inquire into the particular circumstances attending a murder, suicide, or a death by accident. The members were always described

as "men of the neighborhood," and, from every point of view, were a popular body.

The four tables I am about to present in order to show the degree of illiteracy prevailing among the men and women considered separately, or among the whole population irrespective of sex, are the results of a comparison of nearly eighteen thousand names which I was at pains to copy *literatim* from the county records. The names thus copied were those attached to deeds of conveyance, depositions, and inquests of juries alone; and they constitute practically the whole number of those to be found in the records so attached. The name of a large property holder or prominent citizen, appeared many times appended to such legal documents, but, as far as possible, no single name, however often it might occur in the records, was counted by me more than once. The conclusions reached will be found to be substantially, if not precisely, correct.

TABLE I. EXTENT OF THE ILLITERACY PREVAILING AMONG THE MEN AS SHOWN BY JURY ENTRIES.

	Number of Juries.	Number of Persons Signing Their Names.	Number Making Their Marks.
Westmoreland County.....	4	28	20
Accomac County.....	13	92	64
Northampton County.....	14	89	79
York County.....	21	137	115
Essex County.....	8	50	46
Isle of Wight County.....	8	43	53
Rappahannock County.....	4	37	11
Henrico County.....	33	239	157
Surry County.....	75	451	449
Total.....	180	1166	994

The preceding table contains the summary of one hundred and eighty juries impaneled in nine counties in the course, for the most part, of the last half of the Seventeenth century. An examination of the figures will show that, in a total number of twenty-one hundred and sixty persons serving on these juries, eleven hundred and sixty-six were able to sign their names in full; in other words, slightly over fifty percent of the male population represented by these persons had been educated sufficiently to acquire the art of writing, and its corollary, the art of reading also. Let us now inquire as to the relative proportion among the men,—on the one hand, of the persons able to write their names; and, on the other, of the persons compelled by ignorance to make their marks in signing the conveyances and depositions appearing in the county records.

TABLE II. EXTENT OF THE ILLITERACY PREVAILING AMONG THE MEN AS SHOWN BY DEEDS AND DEPOSITIONS.

	Period.	Number Signing in Full.	Number Making Their Marks.
Lower Norfolk County.....	1646-98	1156	783
Isle of Wight County.....	1643-1700	359	260
Surry County.....	1652-84	519	381
Henrico County.....	1677-97	307	337
Elizabeth City County.....	1693-99	142	48
York County.....	1657-1700	967	662
Middlesex County.....	1673-1700	143	55
Essex County.....	1692-99	192	126
Lancaster County.....	1652-94	723	260
Rappahannock County.....	1654-99	943	584
Northumberland County....	1652-77	277	204
Westmoreland County.....	1653-77	369	210
Northampton County.....	1647-98	791	522
Accomac County.....	1641-97	551	574
Total.....	1641-1700	7439	5006

In a total number of twelve thousand, four hundred and forty-five names of men attached to depositions and deeds of conveyance, seventy-four hundred and thirty-nine were signed in full, and five thousand and six were signed with a cross mark alone. The explanation of the higher proportion of the male literates as shown by Table II as compared with Table I, lies in the fact that the signatures to the deeds of conveyance embraced those of all the landowners residing in the counties named, during the periods represented, and it was among the members of this section of the community, owing to their possession of property, that education had been carried the furthest.

There are numerous evidences that illiteracy prevailed to a greater extent among the women than among persons of the opposite sex. The same condition was observed in England during the whole of this century. The proportion of literates among the female emigrants to Virginia was, in consequence of this fact, much smaller than among the male; and the disproportion in the Colony itself was not lessened by any superior advantages which women possessed there for acquiring an education. The Old Field Schools, where the majority of the children received instruction, were, no doubt, attended by a larger number of boys than of girls owing to the former's greater ability to overcome daily the distance intervening between their homes and the school houses. It is, however, a cause for surprise to find so frequently in Virginia at this time women belonging to families of great prominence among the landowners who, by their ignorance of the art of writing, were compelled to make their marks. Nor were these women restricted to the natives of the Colony: Mary, the wife of John

Utie, one of the wealthiest and most conspicuous citizens of Virginia about 1639, was unable to sign her name in full<sup>1</sup>; and this was also true of Elizabeth, the wife of Stephen Charlton, of Accomac,<sup>2</sup> a citizen equally wealthy and prominent, who was, however, careful to obtain for his daughter the best facilities for education the country afforded. It was also true of the wife of Col. John Upton, of Isle of Wight County; of Mary, the wife of Col. George Mason; of Grace, the wife of Col. John Ashton; and of Elizabeth, the wife of Col. Raleigh Travers.<sup>3</sup> (The wives of William Farrar and John Cocke, of Henrico, were unable to write; so also were Mary, the wife of John Washington, of Westmoreland; Sarah, the wife of John Thoroughgood, of Lower Norfolk; and also Sarah, the wife of Argall Yeardley of the same county.<sup>4</sup> These were among the wealthiest and most distinguished citizens of the Colony.)

In 1667, Eleanor, Barbara, and Anne Calthorpe, of York, the three daughters of the head one of the most conspicuous families residing in that part of the Colony, petitioned the local court to make a division of their inherited estate; neither of the three apparently was able to write, although two of the sisters were nearly

<sup>1</sup> York County Records, vol. 1633-94, p. 17, Va. St. Libr.

<sup>2</sup> Accomac County Records, vol. 1640-45, p. 221, Va. St. Libr.

<sup>3</sup> Isle of Wight County Deeds and Wills for 1651; Westmoreland County Records for 1655; Lancaster County Records, fol. 1666-82, p. 91; Rappahannock County Records, vol. 1656-64, p. 202, Va. St. Libr.

<sup>4</sup> Henrico County Records, vol. 1677-92, orig. pp. 233, 390; see also Lower Norfolk County Records; for Mrs. Washington, see York County Records, vol. 1633-94, p. 254, Va. St. Libr.

twenty years of age, and one, sixteen.<sup>1</sup> A case of this kind seems the more remarkable when it is recalled that at least one of the parents, the father, if not both the father and mother, had received an education. The wives of numerous clergymen of distinction were unable to write: such was the case with the wife of Rev. William Thompson, of Surry; of Rev. Thomas Teakle, of Accomac; and of Rev. Samuel Eborne, of Bruton parish. It was also the case with the wife of John Fawsett, the King's Attorney on the Eastern Shore.<sup>2</sup>

There are in the surviving county records the names of about three thousand women attached to depositions and deeds of conveyance. An estimate of the degree of illiteracy prevailing among the members of that sex, based on this list, would embrace representatives of every class, from the owner of landed property in her own right, to the wife of the poorest agricultural servant.

<sup>1</sup> York County Records, vol. 1664-72, orig. p. 166.

<sup>2</sup> This was also true of the wife of Rev. Robert Parke of Surry; see Surry County Records, vol. 1671-84, pp. 24, 393, Va. St. Libr.; Northampton County Records for 1674; York County Records, vol. 1691-1701, orig. pp. 53, 116; Accomac County Records, vol. 1673-76, p. 182. Writing of the literacy of the English women of position during the same period, Macaulay states in his *History* (Chapt. iii.) that the library of the Lady of the Manor and her daughters "consisted of a prayer book and a receipt book . . . even in the highest ranks, and in those situations which afforded the greatest facilities for mental improvement, the English women of that generation were decidedly worse educated than they have been at any other time since the revival of learning . . . during the latter part of the Seventeenth Century, the culture of the female mind seems to have been almost entirely neglected . . . ladies highly born, highly bred, and naturally quick-witted were unable to write a line in their mother tongue without solecisms and faults of spelling such as a charity girl would now be ashamed to admit."

TABLE III. EXTENT OF ILLITERACY PREVAILING AMONG THE WOMEN, AS SHOWN BY DEEDS AND DEPOSITIONS.

	Period.	Number Able to Sign Their Names.	Number Making Their Marks.
Lower Norfolk County.....	1646-98	101	414
Isle of Wight County.....	1643-1700	20	169
Surry County.....	1652-84	32	156
Henrico County.....	1677-97	25	51
Elizabeth City County.....	1693-99	16	29
York County.....	1657-1700	86	260
Middlesex County.....	1673-1700	14	28
Essex County.....	1692-99	10	53
Lancaster County.....	1652-97	107	138
Rappahannock County.....	1654-99	132	463
Northumberland County.....	1652-77	15	73
Westmoreland County.....	1653-77	34	70
Northampton County.....	1647-98	89	196
Accomac County.....	1641-97	75	210
Total.....	1641-1700	756	2310

The preceding table reveals the fact that, among the entire female population of the Colony, without embracing the slaves, only one woman of every three was able to sign her name in full, as compared with at least three of every five persons of the opposite sex, as shown by our second table.

Let us now consider the whole body of the male and female inhabitants independently of the slaves. The following table, based upon fifteen thousand names attached to depositions and deeds of conveyance, shows the degree of illiteracy prevailing among members of both sexes, and of all classes of the white population.



TABLE IV. EXTENT OF ILLITERACY AMONG THE WHITE POPULATION AS A WHOLE.

	Period.	Number of persons signing depositions in full.	Number of persons making marks to depositions.	Number of persons signing deeds in full.	Number of persons making marks to deeds.
Lower Norfolk Co....	1646-98	107	115	1150	1082
Isle of Wight "	1643-1700	35	29	344	400
Surry "	1652-84	14	24	537	513
Henrico "	1677-97	66	114	866	274
Elizabeth City "	1693-99	1	2	157	75
York "	1657-1700	67	117	986	805
Middlesex "	1673-1700	...	...	157	83
Essex "	1692-99	6	7	196	172
Lancaster "	1652-94	18	11	812	387
Rappahannock "	1654-99	...	...	1075	1047
Northumberland "	1652-77	59	65	233	212
Westmoreland "	1653-77	30	65	373	215
Northampton "	1647-98	331	378	549	340
Accomac "	1641-97	274	441	352	343
Total.....	1641-1700	1008	1368	7187	5948

As the signatures in full attached to deeds of conveyance represented the property holders, it is no ground for surprise to find that the number of persons of both sexes who, under these circumstances, were able to write their names was very considerably larger than the number unable to write. On the other hand, it was only to be expected that the number of persons who would be able to sign the depositions in full would be smaller than the number unable to sign except with a mark, because the witnesses were drawn as much from the class lacking in the means to obtain an education as from the class possessing the means. We discover from the preceding table that there were eight thousand one hundred and ninety-five persons

residing in the Colony, during a certain period, who had acquired the ability to write, as compared with seven thousand three hundred and sixteen who had failed to acquire that ability. In other words, the extent of the general illiteracy was limited to less than one half of the white population.<sup>1</sup>

<sup>1</sup> In a petition for pardon made in 1676 by forty followers of Bacon, eighteen, or nearly one half, were able to sign their names in full. These men belonged for the most part to the most obscure section of the class of freemen; see Surry County Records, vol. 1671-84, pp. 226-7, Va. St. Libr. Of the four hundred and thirty-eight persons whose names were attached to the "Grievances" of Isle of Wight, Nansemond, James City, and New Kent Counties, a series of papers presented to the English Commissioners in 1676, one hundred and eighty-five signed their names in full. This lacked about thirty-five of being one half of the whole number; see Winder Papers, Va. St. Libr.



**Part III**  
**Legal Administration**



## CHAPTER I

### The Laws in Force

**I**N making a settlement in the New World, the English emigrants carried with them their system of laws as well as their social customs and their religious doctrines; and time was to prove that this system was to undergo, after transplantation, as slight modification as the forms of their church government and the framework of their social life. From the very beginning, the English authorities aimed to maintain in the communities of Virginia, not only the spirit, but also the letter of the English Law; in the instructions which the King gave in 1606 for the management of the projected Colony's affairs, he expressly enjoined that the persons who were to have those affairs in charge should, in administering them, adhere as closely as possible "to the common law of England, and the equity thereof."<sup>1</sup> It was only during the operation of the *Divine, Moral, and Martial Regulations* that this common law was suspended. In 1620, the Company went so far as to appoint a general committee with power to select from the Mother Country's ordinances all that were directly applicable to the conditions prevailing in the Colony, and to arrange them in a

<sup>1</sup> Instructions for Government of Colony, 1606, Brown's *Genesis of the United States*, vol. i., pp. 66, 68.

compendious but digested form for its government. The principal codifier was Sir Edwyn Sandys, who seems to have obtained the Company's permission to withdraw for several weeks into the country with a view to collecting and framing the laws that should be deemed pertinent.<sup>1</sup>

It was a desire to uphold English law in the Colony that led the Company, in 1620, to pronounce the arbitrary judgment passed on Captain Brewster by Argoll, during his incumbency of the Governor's office, illegal, simply on the ground that it was not warranted by that law.<sup>2</sup> In the instructions drawn up by this body in 1621 for Governor Wyatt's guidance, he was directed to administer justice after the form of the ordinances of England.<sup>3</sup> How keenly the Company resented any imputation that they were seeking to put aside these ordinances in Virginia is shown by their indignant denial of the charge of Governor Butler, who, whilst visiting Jamestown a short time after the massacre of 1622, when a state of confusion and dismay prevailed, openly declared that there were, among the authorities of Virginia, not only "ignorant and enforced strayings from the laws of England, but also wilful and intended ones, inasmuch as some who urged due conformity were in contempt termed men of law." Butler, it seems, was anxious to become a member of the Council, but failing to secure admission, in his disappointment attacked the persons who had the direction of affairs.<sup>4</sup>

<sup>1</sup> Abstracts of Proceedings of Va. Co. of London, vol. i., p. 55.

<sup>2</sup> *Ibid.*, vol. ii., pp. 29, 41.

<sup>3</sup> Randolph MS., vol. iii., p. 161.

<sup>4</sup> Abstracts of Proceedings of Va. Co. of London, vol. ii., pp. 179, 193.

His assertion would have been much more to the point had it been made after the Rev. Mr. Panton's arbitrary conviction half a generation later; the trial of that clergyman, whose only offence lay in criticising Governor Harvey and his supporters, began one afternoon, and was pushed forward with such shameless haste that his sentence was passed the same night. Secretary Kemp, a member of the court, acted also as the prosecutor; and it was due to him that a clause was inserted in the judgment permitting any one to kill Panton on sight, should he, after his banishment, return to the Colony. But that the legality of such proceedings was tested entirely by the application of the laws of England bearing upon a case of that general character is shown by the action of the Governor and Council who succeeded Harvey,—sitting as a General Court, they condemned these proceedings chiefly because no warrant for them was to be found in those laws.<sup>1</sup>

The following year, Berkeley, recently appointed to the Governorship, was especially enjoined to administer justice according to the laws of England<sup>2</sup>; and the same instructions were inserted in the commission of every Governor whose term followed Berkeley's.

As early as the year 1631-2, the oath which each judge in Virginia was required to take commanded him "to do justice as near as may be" to the English laws.<sup>3</sup>

<sup>1</sup> Orders of General Court for 1640, Robinson Transcripts.

<sup>2</sup> Colonial Entry Book, vol. 1606-66, p. 220; *Va. Maga. of Hist. and Biog.*, vol. ii., p. 281. This simply repeats the instructions given to Wyatt in 1639; see Col. Entry Book, 1606-62, p. 213.

<sup>3</sup> Hening's *Statutes*, vol. i., p. 168. See the same expression in oath of justice as late as 1690, York County Records, vol. 1690-94, p. 50, Va. St. Libr. See also Hening's *Statutes*, vol. ii., p. 70. When in 1631-2, courts were established in the upper parts of Henrico



In almost innumerable cases, the county courts are found proclaiming that some particular criminal act was opposed to the "known ordinances of England," and was, therefore, punishable when committed in the Colony; for instance, about 1652, the justices of Lancaster so characterized Captain Thomas Hackett's despatch of a challenge to Mr. David Fox to fight a duel.<sup>1</sup> Sometimes, as if to call every citizen's attention to the fact that the laws of England were in force in Virginia, the Assembly would declare some act to be felonious simply because it was so designated in the text of those laws. Such was the course pursued by that body towards bigamy about 1658.<sup>2</sup>

In the noble Declaration of 1651, the General Assembly proclaimed that "they were sworn to govern and be governed (as far as possible the place was capable of) by the lawes of England"; that they had "inviolably and sacredly" kept these laws so far as "their abilitys

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and Charles City counties, the General Assembly required that their judges should, in all their proceedings, conform "as near as possible to the lawes of England." The commission of the justices throughout the century enjoined the same thing; see for example, the commission of the Surry county justices, 1677, in vol. 1671-84, pp. 241-3, Va. St. Libr.

<sup>1</sup> Lancaster County Records, vol. 1652-57, p. 64. A Governor's Proclamation sometimes began thus: "Whereas by lawes of England, it is provided that in every county a coroner be authorized and empowered to hold an office of inquisition," etc.; see York County Records, vol. 1684-87, p. 182, Va. St. Libr. Persons selling liquor were required to give bond because this was prescribed by laws of England; see York County Records, 1684-87, p. 122, Va. St. Libr. In condemning a negro to death in Northampton county about 1692, the justices declared that he had acted "contrary to many good and wholesome laws of their Majesty's kingdom of England particularly an Act of Parliament made in the reign of Henry the Eighth"; see vol. 1689-98, p. 237.

<sup>2</sup> Henning's *Statutes*, vol. i., p. 434.

to execute and their capacitys to judge would permit"; and that it was to these ordinances alone that, in times of "tumults, storms, and conflict," they could look for the preservation of their safety.<sup>1</sup> The same body stated that, in systematizing the Acts of Virginia in 1660, they bore always in mind the English statutes, which they had adopted "as near as the capacity and constitution of the Colony" would allow. "The laws made by us," they said, "are intended by us but as brief monuments of that which the capacity of our courts is utterly unable to collect out of such vast volumes, though perhaps sometimes for the difference of our and their (English) condition varying in small things, but far from the presumption of contradicting anything therein contained."<sup>2</sup>

Berkeley, writing in 1662, declared that justice was administered in Virginia according to "the lawes of England as far as we are able to understand them." "All things of fact," he added "were tried by jury."<sup>3</sup> Magna Carta, the Petition of Right, and the Writ of Habeas Corpus formed a part of the fundamental ordinances of Virginia even in these early times.<sup>4</sup> When Beverley, the clerk of the House of Burgesses, was arrested in 1682, and thrown into prison, his counsel

<sup>1</sup> *Va. Maga. of Hist. and Biog.*, vol. i., p. 78.

<sup>2</sup> *Hening's Statutes*, vol. ii., p. 43.

<sup>3</sup> *British Colonial Papers*, vol. xvi., No. 78. An Act was passed by the General Assembly allowing a trial by jury if either defendant or plaintiff desired it. This Act was decided to be repugnant to the English law ("by which we are to be governed"), so it was provided that the sheriff, during the sessions of a court, should summon every morning a jury to attend the court that day; *Hening's Statutes*, vol. ii., p. 73.

<sup>4</sup> See a discussion by William Fitzhugh, an able and learned lawyer, of this point in three letters dated one, May 29, 1682, and the others, January 1, 8, 1682-83, respectively.

applied for the writ of Habeas Corpus, which was at first refused<sup>1</sup>; but being afterwards allowed, he was brought into court by the sheriff of York, and bailed in the sum of two thousand pounds sterling.<sup>2</sup> In a civil case occurring in that county in 1682, the same writ was granted by the Governor, no doubt, as the chief judge of the General Court.<sup>3</sup> Howard, some years after this, declared (erroneously it would be inferred) that this great writ had never been put in execution in Virginia, or any other of the American Colonies "as not being understood to extend to those parts." He seems to have made this apparently incorrect statement in an attempt to defend himself for having imprisoned several persons without allowing them to take advantage of this great privilege of the English citizen.<sup>4</sup>

In their memorable pamphlet, the *Present State of Virginia, 1697-8*, Hartwell, Chilton, and Blair, who were well informed as to the conditions prevailing in the Colony, but were strongly disposed to be critical and disparaging, declared that the people there agreed in proclaiming that the fountains of their laws were the laws of England, and the Acts of their own Assembly; but that how far either or both were to apply "was in the judge's breast." It was said by some, according to the testimony of these writers (two of whom had been members of the bar of Virginia), that the only English

<sup>1</sup> Campbell's *History of Va.*, p. 336. His offence, according to several authorities, was in stirring up the Plant-cutters' Rebellion; see Colonial Entry Book, vol. 1680-95, p. 130, et seq.; see also *William and Mary College Quart.*, vol. iii., p. 149.

<sup>2</sup> Hening's *Statutes*, vol. iii., pp. 541, 581; *William and Mary College Quart.*, vol. iii., p. 149.

<sup>3</sup> *William and Mary College Quart.*, vol. iii., p. 149.

<sup>4</sup> Colonial Entry Book, vol. 1685-90, p. 297.

ordinances to be considered in force were those which had been in operation at the first seating, or which specifically stated that the Colony was embraced in their scope. Some claimed that when an Act of Assembly differed from the English statute or common law, the Act prevailed because better suited to the character of the special circumstances designed to be met; others asserted that, when there was a conflict, the English law prevailed, because the legislative power had been given to the colonists only on condition that no statute should be passed derogatory to the laws of England, or the royal prerogative.<sup>1</sup>

It can be easily perceived that this question must have become an important one whenever a case turning on it was brought up in court for trial. Should a statute of Virginia be in conflict with the statute or the common law of England, it would sometimes be to a client's interest that his lawyer should rely on the colonial Act, and sometimes on the law of the Mother Country. A case of this kind, which occurred in 1684, is recorded by William Fitzhugh, one of the most distinguished members of the bar of that day, who happened to be interested in the point; the counsel in this case took the ground that the only English statutes binding in Virginia were those which expressly declared that their scope extended to the Colonies, thus following the analogy of Ireland in its relation to the English laws. Fitzhugh, in a letter to Ralph Wormeley, very successfully combated this suggestion. The Acts passed in Virginia since the country was first seated (so he stated in substance) had become necessary to the people's welfare, because, in the particulars intended to be covered by them, the laws of England

<sup>1</sup> *Present State of Virginia, 1697-8*, Section vi.

were known to be inconvenient, disadvantageous, and burdensome. Those laws, for instance, required that, in the trial of all offences, especially if they were capital, a jury should be summoned from the vicinage. In Virginia, where capital crimes were inquired into only by the General Court at Jamestown, six jurymen alone were impanelled from the vicinage, because, a great distance generally intervening between the scene where the felony was committed and the place where the trial was to take place, it would have been a very heavy expense to summon twelve: the remaining six were obtained from the crowd of persons always in attendance about the General Court.

Fitzhugh claimed that all the other laws made in Virginia in opposition to the English laws, statutory or common, had their origin in a similar reason of convenience or economy applicable to the Colony alone.<sup>1</sup> This statement is strikingly confirmed by five Acts passed by the General Assembly in 1662: these, as Berkeley himself acknowledged in a letter to the Council for Foreign Plantations, were repugnant to the laws of England, and had only been adopted because they were thought to be essential to the prosperity of the community at large. First, all wine debts were declared to be impleadable,—the object of this was to encourage temperance and prudence, virtues urgently called for in the Colony at that time. Secondly, accounts against a dead man's estate were to be supported by written evidence of the debt, such as bill or bond,—the design of this regulation was to protect widows and orphans against all false claims of the kind. Thirdly, any person who had occupied a plantation for a period of five years, without his right of possession

<sup>1</sup> Letters of William Fitzhugh, Feb. 26, 1681-82.

in fee simple having been disputed, was to be taken in law to be the owner,—this was chiefly intended to raise up a barrier on the frontier against Indian invasion. Fourthly, where a person had, by mistake, erected houses on land afterwards shown to be the property of another, he was to receive payment for such improvements,—this was designed to remove one of the worst evils resulting from conflicting patents. And finally, all deeds of conveyance and mortgage were to be put on record within three months after they were drawn. The object of this last regulation was to prevent the property from being disposed of for a second time to a purchaser or second mortgagee unaware of the first transaction; and it was also to protect merchants, who, relying upon the supposed estate of a person who had really transferred it to some one else, would have given a more liberal credit than would otherwise have been prudent.<sup>1</sup>

As all the Acts of the General Assembly had to receive the King's assent before they became finally laws, that assent made valid even those Acts which were as repugnant to the ordinances of England as the five just enumerated; therefore, the conclusive test was whether this assent had or had not been given. When, in the commissions of the Governors and the judges of the county courts, it was declared that they were to perform the duties of their respective offices in harmony with the "known laws of England, and the laws and customs of Virginia,"<sup>2</sup> it was simply intended, so far as the laws, as distinguished from the customs of

<sup>1</sup> British Colonial Papers, vol. xvi., No. 78.

<sup>2</sup> Hening's *Statutes*, vol. i., p. 504; see commission of justices of Henrico county in 1683, vol. 1677-92, orig. pp. 134, 243; see also Essex County Records, vol. 1692-95, p. 238, Va. St. Libr.; and *Va. Maga. of Hist. and Biog.*, vol. i., p. 226.

Virginia were involved, to enforce only such enactments as had received the royal approval; and if that approval had not been refused, it was a ground of no concern whether or not these enactments were in conflict with the English statutory or common law. "Our continual usage," wrote Fitzhugh in 1684 "has been according to the laws and usages of Virginia, and all the precedents in the several courts, both civil and criminal, whereof there are ten thousand precedents."<sup>1</sup> The successive Kings seem to have respected strictly even mere custom unless supposed to be inimical to the royal prerogative; in which case, custom was overridden. For example, in 1685, James the Second ordered Howard to cause all the colonial writs to run in the King's name in opposition to the rule, which had been introduced, of making them run in the name of the Colony.<sup>2</sup>

What made up the fundamental laws to which the various courts of the Colony were subject? Previous to the revocation of the Company's charter, they consisted of such instructions as had been given by the King; the general laws of England; the different ordinances which the President or Governor and Council were, before the meeting of the first General Assembly, empowered to pass; the Acts of the General Assembly after 1619; and, finally, the orders and constitutions framed by the Company's quarter courts sitting in London. The Divine, Moral, and Martial Regulations, which were in operation during the administrations of Gates, Dale, and Argoll, were adopted ostensibly under the authority granted by the royal instructions of 1606 and the Charter of 1609, to the President or Governor and Council to formulate orders

<sup>1</sup> Letters of William Fitzhugh, June 10, 1684.

<sup>2</sup> Colonial Entry Book, vol. 1685-90, p. 56.

and constitutions,<sup>1</sup> although it was expressly enjoined that this authority should be only exercised consistently with the "known laws of England," and it was only too evident that this harsh code was from many points of view directly repugnant to those laws.<sup>2</sup> These draconian rules were tolerated by the Company for a time because believed to be essential to the welfare of the community while struggling to get upon a permanent footing.<sup>3</sup> I have already, in the account

<sup>1</sup> Instructions for Government of the Colonies, 1606, Brown's *Genesis of the United States*, vol. i., pp. 68, 73; see also Charter of 1609, *Ibid.*, p. 235.

<sup>2</sup> By the letters-patent, martial law was expressly restricted to cases of mutiny and rebellion; Abstracts of Proceedings of Va. Co. of London, vol. ii., p. 41. The Commission of Lord De la Warr, as Governor-General, allowed him to "put martial law in force." He was, however, to "rule, punish, pardon, and govern according to such directions, orders, and instructions as his Majesty's Council shall make; and if none such (applicable), then to rule and govern by his own discretion, or by such laws for the present government as he, with such Council as he shall take unto him, shall think fit to make for the advancement of the Colony; such laws to be such as the Council would have the right under their letters-patent to allow him to make"; see Commission of De la Warr, Brown's *Genesis of the United States*, vol. i., p. 379. The Divine and Moral Laws had been put in force by Gates before De la Warr's arrival, and the latter simply gave them his approval. The Martial Laws, as stated later in the text, were put in force by Dale, but only after De la Warr had left the Colony; see Brown's *Genesis of the United States*, vol. ii., p. 528.

<sup>3</sup> Brown's *Genesis of the United States*, vol. ii., p. 529. That this code received the approval of the Council of Virginia in London is shown by a statement recorded at a later date: "The Council of Virginia at one time approved of Martial law, holding Argoll not faulty therein by reason he followed the example of his predecessors, and the custom altogether used hitherto in that plantation, which (it was said in the order of June 14, 1619) was likely to continue until the standing orders for Virginia be made; and he (Captain Brewster) being tried by a Court Martial, the Council hold it to be the noblest trial being judged by soldiers and men of worth"; Abstracts of Proceedings of Va. Co. of London, vol. ii., p. 29.



given of the people's religious and moral condition, dwelt upon the severity of the Divine and Moral Laws. The Martial were largely drawn from the stringent regulations framed for the control and guidance of the army operating in the Low Countries. Under the provisions of this part of the code, the penalty for adultery, perjury, trading with the Indians, and robbery of the public stores, was death; on the other hand, the punishment for slanderous words, or acts that unjustly brought disgrace upon others, was to lie upon the guard every night for a month with hand and foot securely tied together. Death, however, was also the penalty for killing, without leave from the proper authorities, any bull, cow, horse, chicken, or dog. Whoever conspired against the Governor, Lieutenant-Governor, or Marshal was to suffer the same extreme punishment; and the same fate was to befall any one who, having knowledge of such a plot, failed to reveal it.<sup>1</sup>

During Gates's administration, the Divine and Moral Laws, then alone in force, seem to have, in principal measure, been held up simply *in terrorem*. During Dale's administration, on the other hand, the whole code, including the Martial, was put in operation, but in a spirit of stern and exacting justice; while during Argoll's, it was used very often for the purpose of mere tyranny. The condition of affairs in Virginia under the government of these laws, which undoubtedly brought about good order and prosperity at a time when both were essential to the life of the enterprise, did not, however, in the light of the rights guaranteed to the English settlers as English subjects, justify so open a disregard of all the legal provisions adopted in England

<sup>1</sup> Divine, Moral, and Martial Laws, Force's *Hist. Tracts*, vol. iii.

for the citizen's protection. In a memorable paper, which gave what, in its main features at least must have been an accurate account of the plantation's state during these years, it was declared that the operation of the martial laws signified the

slaughter of his Majesty's free subjects by starving, hanging, breaking on the wheel, and shooting to death; some running to the Indians to get relief, being, when again returned, burnt to death; some, for stealing to satisfy their hunger, were hanged; and one chained to a tree till he starved to death; others, attempting in a stolen barge and shallop to get back to England, were discovered and shot to death, hanged, and broken on the wheel; besides continual whippings, extraordinary punishments, working as slaves in irons for terms of years, and that for petty offences, were duly executed.<sup>1</sup>

This terrible system was kept up for five years. The firmest believers in the necessity of enforcing such rigid and pitiless military discipline in the infant colony, no doubt, deeply and constantly lamented that it should have been imperative, while those persons who regarded it as unwarrantedly harsh, and better suited to a camp of convicts than to a community of Englishmen, however distracted by the severity of their hardships, must have hailed with the same satisfaction as Yeardley in 1619 the abrogation of these "cruel laws," and the substitution for them of those "free laws" by which the King's subjects living in England were governed.<sup>2</sup>

In 1619, the General Assembly began to pass Acts which were to enter into the Colony's legal administra-

<sup>1</sup> A Briefe Declaration, etc., *Colonial Records of Virginia*, State Senate Doct., Extra, 1874, p. 75.

<sup>2</sup> *Ibid.*, p. 81.

tion throughout the remainder of the century. During the same and the following year, a code, as we have seen, was adopted by the Company in London under the general name of *Orders and Constitutions*. It shows the care with which all laws and regulations were drafted during the existence of this body, that, whenever an ordinance was proposed at a quarter court, it was immediately referred to a select committee with directions to submit it to competent legal counsel; if such counsel expressed a favorable opinion as to its legality, it was required to be read again in the next quarter court; and it was then finally adopted or rejected. All the laws and orders passed after this manner were promptly entered in a special volume.<sup>1</sup> Many were adopted simply for the guidance of the Company itself; but many were for the administration of justice in Virginia.

After the revocation of the Company's letters-patent, which carried with it the abrogation of that body's orders and constitutions as a distinct code, the courts of the Colony were controlled in their judgments as to the law of the cases coming before them, first, by the terms of the different commissions and instructions granted to the successive Governors; secondly, by the requirements of the numerous commissions of Oyer and Terminer addressed to the Governor and Council; thirdly, by the provisions of the commissions of the justices of the peace made in pursuance of the commissions and instructions received by the Governors from the English authorities; fourthly, by the statutory and common law of England, unless overruled by special enactments of the General Assem-

<sup>1</sup> *Orders and Constitutions*, 1619, 1620, p. 19, Force's *Hist. Tracts*, vol. iii.

bly considered to be more applicable to conditions existing in the Colony; fifthly, by Acts of Assembly which had not been expressly annulled by the royal proclamation; and finally by the practice and usage of the country since its earliest settlement.<sup>1</sup>

<sup>1</sup> Letters of William Fitzhugh, February 26, 1681/82.

## CHAPTER II

### Magistrate's and Parish Courts

WRITING of the administration of law in the Colony about 1656, Hammond, the author of *Leah and Rachel*, remarked that he was confident that there was no place to be found in which justice more speedy or at a smaller charge was to be obtained than in Virginia at this time.<sup>1</sup> And what was true of this period was also true of every other after the meeting of the first General Assembly in 1619, the hour from which the Colony's history as a free and practically self-governing community really dates. The different courts by which the administration of justice was carried on were six in number, namely: the Magistrate's Court; the Parish Court; the Monthly or County Court; the General Court; the General Assembly; and the Court of Admiralty.<sup>2</sup>

The lowest and least important of these courts was the magistrate's, one of the last to be established, as the General Court, the highest and most important, was the first. In 1642, there was passed an Act of Assembly authorizing the nearest justice of the peace to try every case involving an amount not exceeding twenty shillings, or two hundred pounds of tobacco. The objects

<sup>1</sup> *Leah and Rachel*, p. 15, Force's *Hist. Tracts*, vol. iii.

<sup>2</sup> For a short time there was also a Court of Chancery.

this law had in view were twofold: first, to avoid the expense which, by a suit in the monthly court, would have been entailed on both parties by their having to go a great distance and to lose much valuable time in attending its sessions; and secondly, to discourage frivolous and unnecessary litigation in that court, where a dispute over twenty shillings would have absorbed as many hours and required the presence of as many costly witnesses as a dispute over a thousand pounds.<sup>1</sup> The existence of this convenient court, presided over by one man, led Hammond, who, during his stay in the Colony, had had an opportunity of observing its working, to declare that, in Virginia, justice was "daily administered"; and that it was possible to find at every two miles a magistrate empowered "to hear and determine men's differences."<sup>2</sup> At the session of 1657-8, the General Assembly extended the jurisdiction of this court to suits involving an amount not exceeding one thousand pounds of tobacco, provided that the bench was occupied by two magistrates; but if only one was present, then the jurisdiction was to be limited to cases involving an amount not exceeding three hundred and fifty pounds of that commodity. In every case, an appeal lay to the county court.<sup>3</sup>

<sup>1</sup> Hening's *Statutes*, vol. i., p. 272; vol. ii., p. 244; Letter of Ludwell to Secretary Arlington, Winder Papers, vol. i., p. 205, Va. St. Libr. If, by chance, a case involving less than 200 lbs. of tobacco came before the county court, the justices always referred it for settlement to the magistrate residing nearest to the parties to the suit. In 1685, a suit between John Pitman and John Rose for an amount less than 200 lbs. having been called in the county court of Rappahannock, the justices requested Mr. Anthony Savage to determine the same and make such award as he should think proper; see Rappahannock County Records, Orders May 7, 1685.

<sup>2</sup> *Leah and Rachel*, p. 15, Force's *Hist. Tracts*, vol. iii.

<sup>3</sup> Hening's *Statutes*, vol. i., p. 435.

The jurisdiction of the magistrate's court was not confined to civil controversies only: it also extended to criminal acts. As early as 1656, a justice of the peace possessed the power of arresting and binding over any notorious and inveterate law breaker.<sup>1</sup> In every instance in which an indentured servant had been punished improperly by his master, he was entitled to lay a complaint before the nearest magistrate, who, if it was well grounded, required the offender to give bond not to repeat the wrong. Should the maltreatment have been peculiarly outrageous, it was always in that officer's discretion to refer the case's consideration to the judges of the county court sitting as a body. And he was impowered to do this in every criminal prosecution which came before him.<sup>2</sup> He also had jurisdiction in all cases in which a person had good reason to expect physical harm from another; for instance, in 1679, Roger Michael's wife swore in the presence of John Wallop, a magistrate residing in Accomac, that her husband had threatened to maim and kill her; a warrant was at once issued and served

<sup>1</sup> *Leah and Rachel*, p. 15, Force's *Hist. Tracts*, vol. iii. "Notorious, offenders" says Hammond, "of whom there are very few in the country."

<sup>2</sup> Accomac County Records, vol. 1666-70, p. 72; Surry County Records, vol. 1645-72, p. 310, Va. St. Libr. See an interesting letter touching this point from Gov. Berkeley to Major Croshaw: "Major Croshaw, here hath been a woman servant with mee who hath been most unchristianly and cruelly used by her master, one John Russell. I desyre you to call him before ye, and if hee will not give security for his better using of her, then you are to bind him over to the county court, where I doubt not but the commissioners will take care that servants shall be christianly used.

Yr friend and servant,

WM. BERKELEY."

See *William and Mary College Quart.*, vol. iii., p. 151.

on Michael by the constable; and he was not released until he had given surety to keep the peace.<sup>1</sup>

One of the most important duties falling within the magistrate's jurisdiction was to protect the liberty of the person; this question naturally came up most frequently in connection with servants detained beyond the time set down in their articles of indenture, or without any articles having been drawn up at all. In a case of this kind, a bond was required of the master to answer for his conduct at the next session of the county court. And so in all cases where a child or any other individual was improperly held in some form of restraint. It was also in a magistrate's power to issue a warrant of Hue and Cry for the capture of a servant who had run away from his home<sup>2</sup>; and should any one treat such warrant with disrespect, he exposed himself to the risk of very severe punishment. In 1674, for example, Mr. James Vaulx, a magistrate of Middlesex county, having issued a warrant of Hue and Cry, it was taken by Robert Hewes, Richard Holmes, and Penelope Richens and ignominiously tied to the tail of a dog; arrested for showing that officer such contumely, they were carried to the county whipping-post, where the men received thirty-nine lashes apiece, and the woman twenty-nine.<sup>3</sup>

The magistrate was not slow in maintaining the dignity of his court. This is shown in numerous instances, of which one may be given. About 1684, Thomas Holmes was arrested and brought before

<sup>1</sup> Accomac County Records, vol. 1678-82, p. 102.

<sup>2</sup> An Act of Assembly, passed in 1661-62, empowered the justices of the Virginia county courts to do separately, and out of court, whatever could be done in England by a justice of the peace in the like situation; see Henning's *Statutes*, vol. ii., p. 70.

<sup>3</sup> Middlesex County Records, Orders Sept. 2, 1677.



William Randolph, a justice of the peace in Henrico, on the ground that he had entered Benjamin Hatcher's residence without any warrant to empower him to make a search. On being charged with this offence, he "peremptorily and insolently" answered the magistrate: "You may do your worst. I will have my humour," and he followed up these words by "putting on his hat, cocking it up, sitting down, and beginning to sing." "This behaviour," the court declared, "would be to ye great abuse and dishonour of all authority . . . if it were suffered without an exemplary punishment inflicted on the actors thereof." Holmes, who was described as a "troublesome, contentious person, and a frequent contemner of authority," was required by the county court to pay Randolph twelve hundred pounds of tobacco as a fine for his misconduct; which sum, Randolph promptly expended for the benefit of the county's poor, as his only object, he said, "in calling Holmes to account was to maintain the reverence due to his authority as a magistrate."<sup>1</sup>

There seems to have been only one Parish Court in operation in Virginia during the Seventeenth century. In 1656, by a special Act of Assembly, Bristol parish was empowered to erect a tribunal to possess the same jurisdiction as a county court, but to be composed exclusively of such justices as should reside within the boundaries of the parish, which embraced in its area territory situated in both Henrico and Charles City counties. To the monthly court of either county, a right of appeal lay. The reason for this court's establishment seems to be obscure, as there was apparently as much demand for a like tribunal in all the other

<sup>1</sup> Henrico County Minute Book, 1682-1701, pp. 90-91, Va. St. Libr.

parishes as in Bristol. That it was a court of record is shown by the fact that ordinary land conveyances were entered in the books in its clerk's possession. This court was discontinued before the end of the century, and all its records passed into the custody of the clerk of Henrico county.<sup>1</sup>

In 1679, in return for certain advantages, Major Lawrence Smith agreed to seat in the vicinity of the frontier fort built, in 1676, in the valley of the Rapahannock River, a large number of men who would be ready to run to arms on the first alarm of an Indian attack. Within the boundaries of the area which he proposed thus to settle, the General Assembly granted him, in association with two other persons whom he should nominate, the power to determine all cases of right and wrong in any action at common law, or in a court of record, civil or criminal, as far as the county court's jurisdiction extended. Like the court of Bristol parish, the one Major Smith was authorized to preside over was to enjoy the right of appeal to the higher courts. The privilege of establishing a similar court was granted to Colonel William Byrd in case he should seat a like number of men in the vicinity of the fort erected near the Falls of the James River. There appears to be no evidence that either of these courts was ever erected, owing perhaps to the failure on the part of both Smith and Byrd to carry out in full their projects of making large settlements in the localities designated in the Act of Assembly bestowing the right.<sup>2</sup>

<sup>1</sup> Randolph MS., vol. iii., p. 268; Henrico County Records, vol. 1688-97, pp. 185-6, Va. St. Libr.

<sup>2</sup> Hening's *Statutes*, vol. ii., p. 448. The Acts were perhaps vetoed in England.

## CHAPTER III

### County Court : Its Membership

THROUGHOUT the Seventeenth century, the most important tribunal in Virginia for the administration of local justice was the monthly or county court. This court was instituted under the provisions of the ordinance of 1618, which was put in operation by Governor Yeardley the following year. It was one of the most admirable features of the Company's memorable scheme for establishing local government; and its particular object was declared to be "to do justice in the redressing of all small and petty matters."<sup>1</sup> All cases of extraordinary importance, whether civil or criminal, were still left to the decision of the General Court, composed of the Governor and Council sitting in their capacity as judges, a tribunal, as we shall find out later on, coeval with the foundation of the Colony itself. In the beginning, monthly courts were held in the different precincts, for it was not until some years had passed that the system of counties was created.<sup>2</sup> It is quite probable that the term "precinct" at this time

<sup>1</sup> A Briefe Declaration, etc., *Colonial Records of Virginia*, State Senate Doct., Extra, 1874, p. 81; see also Brown's *First Republic*, p. 456. The county or monthly court remained in force in Virginia until abolished by the Constitution of 1902, an existence of two hundred and eighty-three years.

<sup>2</sup> A Briefe Declaration, etc., *Colonial Records of Virginia*, State Senate Doct., Extra, 1874, p. 81.

really signified a cluster of plantations; this would bring it within the scope of the expression used by Captain John Smith, who informs us that monthly courts were ordered to be held "in convenient places."<sup>1</sup> The Colony was spreading out so rapidly that, even by 1619, it had become almost impracticable to determine every controversy that arose, or to try every criminal case, by the single tribunal sitting at Jamestown; and the inconvenience and cost of having to do so would only have steadily increased with the lapse of each year. The monthly court held in each settlement was designed to do away with that expense, trouble, and delay in administering justice which would have followed inevitably had the General Court remained the only tribunal for the trial of every cause, admitting its ability to deal successfully with such a mass of civil and criminal business.<sup>2</sup> The establishment of the monthly court was, therefore, in strict conformity with one of the most important rights guaranteed at Runnymede to all Englishmen.

An Act of Assembly passed in 1623-4 provided for the holding of monthly courts in "all the remote parts of the Colony," in which terms it would appear that Elizabeth City, the country adjacent to Warwick River, Warrosquoick, and Accomac were specially embraced.<sup>3</sup>

Monthly courts were at the next session ordered to be held for the corporations of Elizabeth City and Charles City.<sup>4</sup> By an Act adopted in February, 1631-2, it was

<sup>1</sup> *Works of Captain John Smith*, vol. ii., p. 65, Richmond edition. A commission, dated 1626, to Nathaniel Basse and three others "to try all cases in a plantation except capital" will be found in Randolph MS., vol. iii., p. 203.

<sup>2</sup> *Works of Captain John Smith*, vol. ii., p. 65, Richmond edition.

<sup>3</sup> Hening's *Statutes*, vol. i., p. 125.

<sup>4</sup> Colonial Entry Book, vol. iii., 1624-25, No. 9.

provided that the like tribunal should be set up in the "upper parts within the precincts of Charles City and Henrico." It will be seen that, as the frontier was pushed outward in any direction, whether northward, southward, eastward, or westward, the General Assembly met the needs of the spreading and growing new communities by erecting monthly courts for the administration of justice on the spot without delay, and at the smallest expense practicable.

In the course of 1634, a system of shires after the English model was established. The monthly court now came to be known as the "court of shire,"<sup>1</sup> for it was no longer held for a cluster of plantations or settlements, without well defined boundaries, but for an area of country designated as the "shire," the boundaries of which had been carefully agreed upon, surveyed, and permanently fixed by Act of Assembly. In 1642, the Governor of the Colony, with the advice of his Council, was required by the royal proclamation to choose the most convenient place in each county for the holding of its monthly court; and under the authority of the same memorable document, he, still acting with the Council's advice, appointed a bench of justices for each of the counties; and this power, which he had exercised previously also, the incumbent of the same office continued to exercise throughout the remainder of the century in spite of the numerous political changes in England.<sup>2</sup> He enjoyed the right,

<sup>1</sup> Hening's *Statutes*, vol. i., p. 224.

<sup>2</sup> See preamble of a proclamation issued by Nicholson in 1690, which contains valuable historical details; Northampton County Records, vol. 1689-98, p. 97. Previous to 1642, there was probably no regular place for the meeting of the monthly court. The nominations of justices apparently took place at a session of the General

not only to name the first justices for every new county, but also to rename periodically the justices for the counties long established, and to fill all vacancies which might occur among them. In making his appointments, the Governor, though subject in theory, as we have seen, to the advice of his Council, practically acted on his own responsibility; and this was also the case apparently during the Protectorate down to 1657-8, when these appointments had to be confirmed by the House of Burgesses, for such was then the power of the people's representatives.<sup>1</sup>

The commission of a bench of county justices, after mentioning each by name, as well as the particular members who were to constitute the quorum, and also the number that would be required to hold a session of court, went on to define the bounds of their jurisdiction, and to state in a general way the laws they were expected to enforce.<sup>2</sup> Previous to 1642, the judges of the monthly court always designated themselves as

Court. A letter of Berkeley addressed to the justices of Northampton county, in 1663, states that he had named Isaac Foxcroft under these circumstances; see vol. 1657-64, folio p. 188.

<sup>1</sup> Proclamation by Bennett about 1651 in Lower Norfolk County Records, vol. 1651-56, p. 22; Henning's *Statutes*, vol. i., p. 480. This Act was passed in 1657-58.

<sup>2</sup> At times, the commission seems to have been drawn rather informally; for example, in Surry county, in 1676, the commission of the justices for that year contained, on one side of the document, a list of the magistrates in the order of their rank, and on the other, an endorsement by Gov. Berkeley: "I doe confirm the gentlemen herein named to be justices of the Peace for Surry County, and that the three first be of the Quorum, and that Mr. Robert Canfield be of the Quorum in place of Captain Swann, and that Mr. Arthur Allan be likewise added to the Quorum; May 18, 1677, William Berkeley." See Surry County Records, vol. 1671-84, p. 180, Va. St. Libr. For the regular commission, see any of the surviving county records for the Seventeenth century.

"commissioners"; and as late as 1655-6, they were still referred to in Acts of Assembly in that manner; but about 1662, the expression "Justice of the Peace" was required by law to be applied to them.<sup>1</sup> The commission seems to have been renewed with frequency, though apparently it ran without any fixed limit; for instance,—to take the case of Henrico county for the series of three years beginning with 1684 and ending with 1686,—in 1684, the justices of that county received their commission bearing the date of May 10; their next bore the date of December 7, 1685; and their third, of April 6, 1686.<sup>2</sup> An increase in the ordinary number of justices, or the appointment of new justices to fill vacancies caused by death or removal, was made by special proclamation.<sup>3</sup>

According to the Act of 1661-2, the justices were to be chosen from among the "most able, honest, and judicious" citizens of their respective counties.<sup>4</sup> The commission itself very often stated that "the justices should be the most honest and judicious persons" available; there are innumerable proofs that they were

<sup>1</sup> See Hening's *Statutes*, vol. ii., pp. 69, 70; Acts of Assembly 1655-56, Randolph MS., vol. iii., p. 265; see also Campbell's *History of Virginia*, p. 255, quoting Hening's *Statutes*, vol. ii., p. 69. Justices of the county courts are referred to as "commissioners" in Hening's *Statutes* for 1660; see vol. ii., p. 21; see also Surry County Records for 1660.

<sup>2</sup> See Henrico County Records of these dates; also Essex County Records, May 10, 1692, and April 10, 1693. Berkeley, in a commission to the justices of Lower Norfolk, dated June, 1642, the year the county seats were chosen, states that their appointment was to remain in force "until another commission under his hand and seal of the Colony should signify the contrary"; see Lower Norfolk County Records, Orders June 16, 1642.

<sup>3</sup> Surry County Records, vol. 1671-84, p. 130, Va. St. Libr.

<sup>4</sup> Hening's *Statutes*, vol. ii., p. 70.

drawn from the body of the wealthiest, most capable, and most respected men to be found in the whole community. Apart from any conscientious desire to place the law's administration in each county in the hands of the citizens there rendered by their talents and training the most efficient, and by their fortunes, the least open to improper influences, the Governor was inclined to use the opportunity presented to him, in renewing the several commissions, to strengthen his position, as the head of affairs in the Colony, by nominating the most powerful men to the office, an act certain to ensure their good will and zealous support.<sup>1</sup> In a great number of cases, the Governor seems to have consulted his own judgment exclusively in naming a justice of the county court; this was almost always the case in his appointment of young men of extraordinary promise, or whose fathers he wished to please and compliment. In 1671, Berkeley, who, in spite of his vehemence and boisterousness, could assume all the ingratiating arts of an accomplished courtier, in selecting young William Digges, son of Governor Edward Digges, to fill this post, wrote: "I am well satisfied with his ability and integrity, and I judge it necessary that those who are to be interested in the good of the Colony should be early in the informing themselves of the best means of serving it."<sup>2</sup> Bacon, in his memorable "Declaration of the People," brought against Berkeley the charge "of having abused and rendered contemptible the majesty of justice by advancing scandalous and ignorant favorites to places

<sup>1</sup> A large proportion of the justices were also members of the House of Burgesses.

<sup>2</sup> York County Records, vol. 1664-72, p. 517, Va. St. Libr., Robert Carter was also appointed a justice at a very early age.



of judicature."<sup>1</sup> William Digges may have been ignorant, in consequence of youth and inexperience, but there is no reason to think that he was not a man of honor and integrity. Others, however, whom Berkeley, entirely of his own motion, appointed in order to reward for personal support, or to curry good will, were probably more open to exception on the grounds complained of.

During the time of the Protectorate, when the Governor's power was seriously curtailed, it was provided that no one should be admitted to the bench of a monthly or county court unless his appointment was "desired" by the members of that body.<sup>2</sup> This had not previously been the general rule, though, before the Act was passed, many of the judges had been nominated in the commissions simply on the recommendation of their future associates; such was the case with Peter Knight and James Tuke, who, in 1641, became members of the monthly court established in Isle of Wight county<sup>3</sup>; and doubtless many others were then advanced to this position in the same manner. After the Protectorate ended, the Governor seems to have acquired the power to name anyone he preferred to be a justice of the peace, whether acceptable to his fellows on the bench or not; but naturally, when there were so many appointments to be made, he was perhaps, in the greatest number of instances, almost entirely influenced in his selection by the recommendation of the justices with whom the new judge was to sit. This recommendation very often took the form of an open applica-

<sup>1</sup> Winder Papers, vol. ii., p. 23; British Colonial Papers, vol. xxxvii., Doct. 41.

<sup>2</sup> Randolph MS., vol. iii., p. 265; Henning's *Statutes*, vol. i., p. 480.

<sup>3</sup> Robinson Transcripts for 1641, p. 25.

tion; for instance, in 1672, Lemuel Mason, apparently the presiding officer of the Lower Norfolk county court, submitted a petition to Governor Berkeley, in which, after stating that both Colonel Thomas Willoughby and Captain William Moseley, members of the quorum, were dead, and that Captain Thomas Fulcher designed removing from the county, begged that Mr. John Porter, Mr. William Robinson, and Mr. Francis Sayer should be nominated to the quorum, and Mr. John Hatton and Mr. Malachi Thruston added to the commission.<sup>1</sup> It will be seen that Mason was suggesting the names of the larger number of the judges of the proposed new court, and, no doubt, Berkeley assented. This he certainly did in the case of Francis Pigott, whom, about this time, he was requested by five justices of Northampton to appoint to the bench of that county as a man possessing abilities sure to prove "very serviceable to ye countrye."<sup>2</sup>

A few years later, when Jeffreys occupied the post of Governor, he received from the justices of Westmoreland a petition in which were mentioned the names of the persons considered by them to be the most competent to fill the vacancies at that date existing in the commission.<sup>3</sup> Following the same precedent, the justices of Henrico, in 1677, recommended for appointment to vacancies on their bench Thomas Batte, Peter Feild, and Richard Kennon, whom they declared

<sup>1</sup> Lower Norfolk County Records, vol. 1666-75, p. 116.

<sup>2</sup> Berkeley subscribed the petition in Pigott's favor as follows: "The above request is granted. I hereby authorize and appoint Mr. Francis Pigott to be admitted into ye commission of Northampton County and to be accordingly sworn; Oct. 25, 1673." This petition will be found in Northampton County Records, vol. 1664-74, p. 229.

<sup>3</sup> Westmoreland County Records, Orders August 15, 1677.

to be "honest, substantial, and able men," peculiarly fit for the place. The court, it appeared, had recently been much weakened by loss of members, and according to the petitioners, there was an urgent need of "strengthening it."<sup>1</sup> Again in 1692, the justices of the same county requested the appointment to vacancies in their commission of Captains Joseph Royall and William Soane, Thomas Cocke, Jr., and Mr. Giles Webb. At this time, the number of judges able to attend the court's sessions had been greatly reduced by death, sickness, and absence from the county, in consequence of which Henrico's legal business had been much obstructed and delayed.<sup>2</sup>

In the beginning, the number of justices sitting in the monthly court very often did not exceed four.<sup>3</sup> At the session of the Assembly held in 1628-9, it was provided that the membership should consist of eight<sup>4</sup>; and for a long series of years, this seems to have constituted the limit. During the Protectorate, however, an enlargement probably took place, in obedience to the idea that a restriction of the position to so small a number was not consistent with the more popular form of government which now prevailed. The more or less royalist Assembly of 1660-1 declared, perhaps not inaccurately, that the fact that so many justices had recently been appointed to the bench in each county had diminished the honor of the position, and raised up among themselves factions detrimental to the people's welfare; in consequence of this view, an Act

<sup>1</sup> Henrico County Minute Book, 1682-1701, p. 33, Va. St. Libr.

<sup>2</sup> *Ibid.*, p. 351, Va. St. Libr.

<sup>3</sup> See commission to Nathaniel Basse and three others in Randolph MS., vol. iii., p. 203. This was in 1626.

<sup>4</sup> Hening's *Statutes*, vol. i., p. 132.

was passed reducing the membership of each county court to the original number of eight; and this seems to have been accomplished by simply removing from the commission all those justices whose names followed the first eight in the document appointing them. It required the consent of one half of the remaining judges before the court could be legally called together.<sup>1</sup> In the following March, the same Act of Assembly was adopted a second time.<sup>2</sup>

As the administration of affairs in Virginia grew more and more reactionary under the influence of the example set by the royal government in England, as well as by its principal representative in the Colony, Berkeley himself, there was a disposition, in making up the county court, to return to the more popular form prevailing in the time of the Protectorate. This was not due on Berkeley's part, with whom the appointments lay, to any sympathy with the sentiment which had led to the court's enlargement during the Puritan Supremacy, but merely to a desire to render his position the more absolute by having a greater number of offices at his own command to present to those who had served him, or whose favor would be of use to him. In 1668, he nominated at one time to the Surry county bench as many as twelve justices.<sup>3</sup> It was such a liberal distribution of appointments among his own zealous partisans as this, which, no doubt, moved Bacon to complain so bitterly of Berkeley's advancement of his favorites to important judicial posts.

In 1677, the year following the suppression of the

<sup>1</sup> Hening's *Statutes*, vol. ii., p. 21; Accomac County Records, vol. 1673-76, p. 17.

<sup>2</sup> Hening's *Statutes*, vol. ii., p. 70.

<sup>3</sup> Surry County Records, vol. 1645-72, p. 360, Va. St. Libr.

great insurrection (an event having its origin chiefly in abuses of this kind), there seems to have been a return to the conviction that eight was the proper number of persons to form the county court; in the course of that year, Governor Jeffreys, who, as one of the English commissioners, had made a thorough investigation of all the malfeasance causing the rebellion, entered the names of eight justices only in the new commission for Surry, where a few years before, as we have seen, Berkeley had appointed twelve.<sup>1</sup> The new commission gave, as the Governor's authority for nominating only eight, the Act of Assembly dated March, 1662. In 1673, when Berkeley was at the height of his power, the number that could be appointed was enlarged to ten by an order apparently of the Governor and Council alone,<sup>2</sup>—an order which seems to have been disregarded by Jeffreys at a later date, perhaps because he considered eight, the original number, to be sufficient for the performance of the court's duties. After his administration closed however, ten appears to have become again the usual number, as better ensuring a quorum's presence at every session, an object of paramount importance, and one not always attained, owing to stress of weather, or to sickness among the members.<sup>3</sup> The court's adjournment to the following month, on account of the absence of the necessary number of members, simply meant an

<sup>1</sup> Surry County Records, vol. 1671-84, pp. 241-3, Va. St. Libr.

<sup>2</sup> Accomac County Records, vol. 1673-76, p. 17.

<sup>3</sup> See Proclamation of Jeffreys, Surry County Records, vol. 1671-84, pp. 241-3. In 1692, there were thirteen justices nominated in the commission of Essex County; see Records, vol. 1692-95, pp. 155, 156.

inconvenient and expensive delay in the settlement of the county's legal business.<sup>1</sup>

<sup>1</sup> In 1691, the court of Henrico county complained that, when the House of Burgesses convened, which called two of the justices away to Jamestown, it was difficult to get together the proper number of judges to hold a session, as there was always a certain number absent for one reason or another; see Records, Minute Book, 1682-1701, p. 341, Va. St. Libr.

## CHAPTER IV

### County Court: Its Membership (*Continued*)

AS early as 1634, it was expressly provided by law that members of the Council should attend the terms of the monthly courts. It was during this year that the area of the entire settled part of the Colony was divided into eight great shires or counties; and to each of their eight "courts of shire," as they were sometimes designated, it was possible to assign a single Councillor, who was competent to serve on its bench because he was a judge of the General Court.<sup>1</sup> This was a form of the custom prevailing in England of the members of the higher tribunals travelling the circuit. In 1642, when, as we have seen, the Governor was impowered by Charles the First's proclamation to appoint in each county a convenient place for holding the inferior court, and to nominate the commissioners of that court, Berkeley informed each new set of justices that the members of the Council of State were authorized to take seats on the bench along with them, and join in their decisions, although the Councillors' names did not appear in the commissions; and that it should also be lawful for the same officers, whenever there was pressing occasion for it, to call or conduct a court in the absence of the justices forming the quorum. The

<sup>1</sup> Hening's *Statutes*, vol. i., p. 224.

same instructions were repeated in 1648.<sup>1</sup> It was also in the power of the Governor, as the supreme judge of the General Court, to sit on the bench of any monthly court happening to be in session wherever he was present. In October, 1637, and also in April, 1639, Harvey, for instance, presided at the sessions of the York justices.<sup>2</sup>

As the counties increased in number, it became impracticable to assign a different Councillor to each county court; this, in 1661-2, led to the passage of an Act which provided that two members of the Council should be commissioned yearly to sit in August in all the monthly courts held within the boundaries of an area of country previously determined; but no Councillor was to perform a judge's functions in that part of the Colony where he resided. This Act created a series of circuits, to each of which a couple of itinerant Councillors were to be appointed. That this law went into operation is shown by the fact that, in August, 1662, Col. Edward Hill and Col. Thomas Swann, whose homes were situated in the James River circuit, sat with the justices at the term of the York monthly court held in the circuit of York River. Before they took their seats, their commissions as itinerant judges were read from the bench; and on the same occasion, a public proclamation was also cried in their name ordering to come forward all persons who, since the "last circuit" of these judges, had good reason to complain of the York court on the score of partiality or injustice; or of the sheriff or clerk of that body for

<sup>1</sup> Lower Norfolk County Records, Orders June 16, 1642; also vol. 1646-51, p. 76.

<sup>2</sup> York County Records, vol. 1633-94, p. 7, Va. St. Libr.; see also Orders April 25, 1639.



neglect of duty or extortion of fees.<sup>1</sup> This was probably the chief reason why the Councillors were impowered to sit on the county benches; it was evidently supposed that their presence would ensure a more active enforcement of the law, and also serve as a strong deterrent against inattentive or wrongful conduct.

It is remarkable that this extraordinary zeal on the Governor's and Council's part should have been shown at the beginning of the period when there was to be the most decided violation of popular rights by every section of the civil authorities recorded in the Colony's history. It might have been predicted almost at the start that this regulation, although so excellent in its principle, would not continue in force for any great length of time. In the first place, in performing the duties of the numerous lucrative offices soon combined in their persons, the Councillors had no leisure to devote to a personal supervision of the proceedings of the county courts; had they been serving simply as judges of the General Court, a participation in these proceedings might have been properly expected of them; but only under these circumstances. Secondly, the additional expense imposed on a county by the presence, during a term, of these itinerant Councillors made the Act authorizing them to be commissioned a serious public burden; for instance, the county of York was required, in the levy of 1662, to tax its inhabitants to the extent of nine

<sup>1</sup> Hening's *Statutes*, vol. ii., p. 64. The Act begins as follows: "Whereas the Governor hath been pleased to take upon him and the Council the pains of visiting all the county courts of the country," etc. It will be seen from this that the initiative was taken by the Governor and Councillors themselves; see also York County Records, vol. 1657-62, pp. 433-4, Va. St. Libr.

thousand pounds of tobacco simply to meet the charges entailed by the "accomodation" of Colonels Hill and Swann, who took part in the county court's proceedings at its August meeting; nor did this embrace the entire outlay which had to be made in consequence of their participation. Independently of their loss of valuable time, and the increased expense to the counties following upon their entertainment, the Councillors themselves must have soon recognized that, in undertaking to visit the different courts held in their respective circuits, they had assumed a task, which, owing to the long distances to be traversed, the inferior highways, and the stress of varying weather at an hour when there was not always shelter at hand, would be attended by extraordinary fatigue, and constant danger to health. In the light of these circumstances, it is not surprising to find that the law commissioning the Councillors as itinerant judges was soon repealed.<sup>1</sup> But this did not prevent the members of the Council, as members of the General Court *ex officio*, from taking their seats in the county courts, either on their own motion, or at the special request of the justices themselves, anxious to obtain the benefit of their superior ability and experience.<sup>2</sup>

Previous to the Revolution of 1688, the judges of the county courts were required by the terms of their respective commissions to take the oaths of allegiance and supremacy, and also the oath of a justice of the peace.<sup>3</sup> After that event, in addition to the oath of a justice of the peace, the judges were ordered to sub-

<sup>1</sup> Colonial Entry Book, vol. lxxxix., p. 10.

<sup>2</sup> *Ibid.*, 1676-81, p. 161.

<sup>3</sup> See Commission of Surry County Justices for 1677 in vol. 1671-84, pp. 241-3, Va. St. Libr.

scribe to the new oaths formulated by Act of Parliament.<sup>1</sup> Under the prevailing rule, the Governor issued a *dedimus* to certain designated members of a new court authorizing them to administer the oaths to the remainder; and these, in their turn, were, by the same instrument's terms, directed to administer the oaths to the justices named in the same document.<sup>2</sup> In 1673, Colonel Stringer, the senior justice of Northampton, having been instructed by Berkeley to swear in the judges nominated in that county's new commission, administered the oaths to Colonel Southey Littleton and Colonel Charles Scarborough; and they then administered the same oaths to the rest of the court, including Colonel Stringer himself.<sup>3</sup> The substance of the judicial oath which each member of a county court took remained the same practically throughout the century, although the political oaths taken by the same judges underwent, as we have seen, so radical a change. After, in a general way, requiring that the justice should decide rightly and properly, according to the dictates of his conscience, it bound him not to receive any gift offered to influence his decision; and also to be impartial to the rich and the poor alike, without favor or affection, hatred or malice. Such was the oath used in 1642<sup>4</sup>; and as late as 1690, the only alteration which had been introduced was one of expression merely,—namely, that the justice “should do right to the rich and poor alike according to the

<sup>1</sup> See Commission of Essex County Judges for 1692, vol. 1692-95, pp. 155, 156.

<sup>2</sup> See Surry County Records, vol. 1684-86, p. 92, Va. St. Libr.; Rappahannock County Records, vol. 1686-92, orig. p. 293.

<sup>3</sup> Accomac County Records, vol. 1673-76, p. 19.

<sup>4</sup> The form of the justice of the peace's oath will be found in Northampton County Records, Orders Feby. 10, 1643.

laws and customs of this country, and as near as may be to the laws of England."<sup>1</sup> As to the civil or political oath, as distinguished from the purely judicial one already referred to, the Act of Parliament passed after the accession of William and Mary, having first done away with the oaths of allegiance and supremacy, substituted, among others, one requiring the judge to deny all belief in the transubstantiation of the elements of bread and wine in the Sacrament of the Lord's Supper, after their consecration by any person whatsoever.<sup>2</sup>

The commission of the justices of a county court always nominated at least four of them to constitute the quorum. Three other members of the bench, associated with one member of this inner body, formed a sufficient number to make up a valid court.<sup>3</sup> The person whose name appeared at the head of the list of the quorum very probably always served as the presiding justice of the court; in his absence, the second on the list; and so on to the fourth. Should a Councillor happen to be present, he was always given the seat of honor in deference to the fact that he was a member of the Colony's highest court; and in the minutes of the session, his name was always entered first. We find this occurring with particular frequency in the records of Henrico, where the elder William Byrd, a citizen of

<sup>1</sup> See oath in York County Records, vol. 1690-94, p. 50, Va. St. Libr.

<sup>2</sup> See for the oaths in use after 1688, Northampton County Records, vol. 1689-98, p. 220. In several instances, persons appointed justices were not allowed to take their seats because they had refused to subscribe to the new oaths; see case of Travers Thornton in Richmond County Records, Orders Sept. 7, 1692.

<sup>3</sup> See Proclamation of Howard, Surry County Records, vol. 1684-86, p. 2, Va. St. Libr.

unusual public spirit, was in the constant habit of participating in the county court's proceedings when not called away to Jamestown by his regular official duties.<sup>1</sup> In Lower Norfolk, the presiding judge was popularly spoken of as the "Chief Justice"; elsewhere, he was very often designated as the "President of the Court."<sup>2</sup> The justices were individually extremely jealous of the seniority of their rank; in 1695, for instance, Captain William Custis, of Accomac, complained that, although he stood third in the commission of 1694, he was in the new one put much lower; he petitioned the county court to rectify this error; and in accord with his request, Col. Scarborough was instructed to communicate with the Governor in order to have him reinstated in his former higher place.<sup>3</sup>

The office of a justice was looked upon as being so purely honorable that, following the English precedent, it carried no salary in the strict sense of the term; nor were there any perquisites growing out of the position approaching in importance those which made the office of Councillor so valuable from a pecuniary point of view. The only remuneration at any time bestowed on

<sup>1</sup> See, for instance, Henrico Court Minute Book, 1682-1701, p. 49, Va. St. Libr. In the early years of the Colony's history, the commander of the county, the highest military officer in it, was always made a member of the commission. It is probable that he generally served as the first of the quorum and the presiding justice; see Accomac County Records, vol. 1640-5, p. 146, Va. St. Libr.

<sup>2</sup> Lower Norfolk County Records, Orders Feby. 17, 1687-8; Henrico County Records, vol. 1677-99, p. 45, Va. St. Libr.; Rappahannock County Records, Orders May 7, 1685. The same justice very frequently continued to be, for many years, the presiding justice. This was the case with Henry Jenkins, of Elizabeth City county.

<sup>3</sup> Accomac County Records, vol. 1690-97, p. 154.

the judges of the county bench by an Act of the General Assembly was the thirty pounds of tobacco ordered, under the provisions of a statute passed in 1661-2, to be paid towards the maintenance of these judges by every litigant in their respective courts who should fail to win his suit.<sup>1</sup> The justices in one or two counties appear to have levied a special tax with an eye to reimbursing themselves for some of the expenses imposed on them by their office; but whenever they did so, they were at great pains to offer some explanation of their act, as if they knew that it would be popularly regarded as without excuse in law or custom. In 1673, the judges of Middlesex, having entered an order for five hundred pounds of tobacco to be paid to each member of the commission, declared, in their own defence, that this was necessary to save them from a heavy loss in maintaining themselves and their horses during the monthly session of court; and that they should enjoy this advantage if only to compensate them for the fatigue and inconvenience of going so great a distance from their homes. To show that they were desirous of reimbursing themselves only for their actual expenses, it was provided that, should a member find that he would not require as much as five hundred pounds, he should turn the surplus over to the judges who would need a larger amount.<sup>2</sup> The care with which these justices sought to inform the public that they were not thinking of personal profit proves that they were doubtful about the propriety of their own act; and the levy would probably, owing to its being opposed to the spirit of both the Virginian

<sup>1</sup> Hening's *Statutes*, vol. ii., p. 66.

<sup>2</sup> Middlesex County Records, vol. 1673-80, folio p. 6.

and the English custom, never have been laid had not the bad example set by the Long Assembly, still undissolved at this time, in mulcting the taxpayers, extended its evil influence to every public body in the Colony possessing the power to place, for its own benefit, an additional load on the backs of the unfortunate people. On its face, a charge to reimburse the justices for their bare expenses appears to have been thoroughly equitable, and yet the act of the Middlesex bench in imposing it aroused so much hostile feeling that the General Assembly itself, not over-scrupulous as it had become in increasing the public burdens for its members' private advantage, took the matter up with undisguised indignation, and declaring such a tax for such a purpose to be illegal, positively prohibited its repetition by any county thereafter.<sup>1</sup> No further attempt seems to have been made in that direction.

Although the commission of a bench of justices was renewed at comparatively short intervals, and although too the Governor seems to have been impowered, in theory at least, to exercise his discretion in not reappointing the same judges, nevertheless there are numerous indications that the same persons continued to serve as long as they desired to do so, or their health permitted.<sup>2</sup> As early as 1640-1, a rule was in operation that a justice's place in the monthly court should become vacant as soon as he removed from the county;

<sup>1</sup> Hening's *Statutes*, vol. ii., p. 315.

<sup>2</sup> It was expressly stated in Governor Howard's instructions that, in order to prevent arbitrary removals of justices, there was to be no limit to the time during which they were to continue in office. When one was removed for good cause, the fact was to be promptly reported to the English Government; see Colonial Entry Book, vol. 1685-90, p. 31.

and thereafter he was not to be counted as belonging to the membership of that body.<sup>1</sup> The court itself invariably took very decisive action whenever one of its members was guilty of what was considered to be serious misbehavior. In the course of 1644, William Andrews, a justice of Northampton, was accused of violating a recently adopted law by trading with the Indians; he was enjoined to clear himself of the charge, if possible, at the next term of the bench; and should he fail to do this, was required to answer to the first General Court.<sup>2</sup> The emphatic tone of this order plainly revealed that an inability to secure an acquittal, when the case against him was fully investigated, would lead to a recommendation for his expulsion. In 1658, Mr. Richard Cole, of Northumberland, who quite accurately perhaps described himself in his own epitaph as a "grievous sinner," was removed from the bench of that county on the score of "misdemeanors"; but what these misdemeanors were, is not stated with particularity in the charge against him.<sup>3</sup> Three years later, William Daynes, of Lower Norfolk, was suspended from the commission because it was notorious that he was detaining in an illicit cohabitation with himself the wife of William Watson; for this grave offence, he was taken into custody; and only secured his release by giving bond in the sum of one thousand pounds sterling.<sup>4</sup> He was finally expelled from the court by the Governor (acting under the Council's advice) as one who, by his scandalous conduct, had unfitted himself to fill so honorable and responsible an office.

<sup>1</sup> Robinson Transcripts, p. 25.

<sup>2</sup> Northampton County Records, Orders Sept. 20, 1644.

<sup>3</sup> Northumberland County Records, Orders Febry. 24, 1658.

<sup>4</sup> Lower Norfolk County Records, vol. 1656-66, p. 303.



Disobedience to the orders of the General Court, or of the Governor alone, was deemed sufficient to justify the suspension or removal of a justice. In 1678, Robert Canfield and Arthur Allan, members of the Surry county court, to which they had been appointed by Berkeley, were suspended by Berkeley's successor, Jeffreys, because they had used all their influence with the other judges to persuade them to reject Colonel Swann as sheriff, though presenting a commission from the Governor himself. The existing incumbent was retained in spite of the fact that his right to occupy the place was not really supported by law or custom. The decided course adopted by Jeffreys in this case was declared by himself to be due largely to the evil consequences which would follow upon such contumacy to the constituted authorities in those critical times, when "such as were not yet sufficiently convinced of their late disobedience" would be only too ready to take encouragement, and imitate so bad an example. Allan and Canfield were not readmitted to the bench until after the close of Jeffreys's administration.<sup>1</sup> In 1696, William Roscow was instructed by the Council to communicate a special order to Rev. Mr. Doyle, who was the rector of Denbigh parish. Roscow was one of the churchwardens of this parish, and also a member of the commission of the county in which the parish was situated. He failed, evidently from design, to obey the Council's order, and being unable to offer any

<sup>1</sup> Surry County Records, vol. 1671-84, p. 273, Va. St. Libr. See also Orders Febry. 14, 1678-9. Canfield and Allan defended their position by bringing forward what Jeffreys alleged to be "a pretence of statutes and other things of their own innovation," and "thus not only filled the ears of the people in a full court with amazement and doubt, but drew the rest of the peaceable commissioners to comply with them."

acceptable defence for his conduct, was removed from his office of justice.<sup>1</sup>

Sometimes, a pertinacious persistence or noisy and offensive deportment in the court-room was considered to be sufficient to justify mere suspension. Captain Thomas Chamberlaine, of Henrico, who played a very varied part in his own community, was cursed with a passionate temper that brooked neither opposition nor restraint. His native want of self-control was accentuated by a strong taste for liquor, the consequence of which was that he found himself constantly involved in quarrels and brawls. Nevertheless, being at bottom, no doubt, a man of a high and generous spirit, who lacked neither sense nor integrity, he was appointed to the commission of the county; but even in this conspicuous and responsible post, was unable to put a check upon his vehement and unruly disposition. Finally, after bearing with his violent outbursts and "contemptuous affronts" until they became unendurable, his fellow justices complained of his conduct to the Governor and Council, who promptly suspended him until he should be able to present a certificate from his associates that, for some time, he had not been guilty of any departure from good conduct.<sup>2</sup>

<sup>1</sup> Minutes of Council, Oct. 27, 1696, B. T. Va., vol. liii.

<sup>2</sup> Henrico County Records, vol. 1677-92, orig. p. 101.

## CHAPTER V

### County Court: Its Dignity

THERE are many indications that the justices showed a strict regard for decorum in their behavior while holding the terms of their respective courts. This regard for propriety in their own conduct was not confined to mere personal bearing. The example which Captain William Randolph, a member of the Henrico bench, set in 1687, was one always followed by the whole body of justices:—John Pleasants had been summoned to court to answer in a suit involving an allowance for cask in a payment in tobacco; when the case came up for trial, Randolph, having risen from his seat, refused to give an opinion on the ground that he was “a considerable dealer in the tobacco trade,” and that if he were to join in the decision, he would expose himself to the “censure of partiality.”<sup>1</sup> A company of judges in the habit of being guided in the performance of their judicial functions by such scrupulousness as this, were certain to maintain the dignity of their respective courts when in session. That they did do so is disclosed by numerous instances preserved in the County Records. In 1655, John Pigott, of Lower Norfolk, was required to pay a hog-head of tobacco as a fine because he had spoken of the

<sup>1</sup> Henrico County Minute Book, 1682-1701, p. 189, Va. St. Libr.

justices and Col. Thomas Lambert in abusive terms in the very court-room.<sup>1</sup> Five years later, Philip Mongom, a negro, was so coarsely presumptuous as to throw down on the table in the court-room of Northampton, a pair of raw and bleeding hog's ears; for this offence, he was ordered to pay one hundred pounds of tobacco; and in addition, was sternly rebuked for his unseemly conduct.<sup>2</sup> Stephen Chilton, of Lancaster, in 1665, appeared in the court-room while the justices were in session, and without provocation affronted them grossly. The court promptly ordered him to be committed to the stocks; but he was rescued by his friends as the sheriff was conducting him thither, and so great was the tumult following, that the judges thought it wisest to adjourn; but immediately on quiet being restored, they assembled again, and at once commanded the sheriff to arrest the ringleaders, and to carry them under a strong guard to Jamestown to be tried there by the General Court.<sup>3</sup> The same or a second Stephen Chilton gave serious offence to the county court twenty years later, and for this was required, first to offer a petition to the justices on his bended knees, and afterwards, at several successive sessions, to make a full recantation.<sup>4</sup> In 1687, he was placed in the stocks, because he had, in a drunken fit, insulted Captain David Fox while Fox was occupying the bench along with the other justices of the county; and he was not released until he became sober again.<sup>5</sup>

<sup>1</sup> Lower Norfolk County Records, vol. 1651-56, p. 141.

<sup>2</sup> Northampton County Records, vol. 1657-64, p. 68.

<sup>3</sup> Lancaster County Records, vol. 1656-66, p. 369.

<sup>4</sup> *Ibid.*, Orders Oct. 14, 1685. Henry Beecher, of Lower Norfolk county, was subjected to a like punishment for insulting a justice; see orders Feby. 17, 1687-88.

<sup>5</sup> Lancaster County Records, Orders Aug. 10, 1687.

William Ligon, for resisting in the court-room the sheriff and the justices whom the sheriff had called to his assistance, was committed to jail, on the ground that his contemptuous behaviour had brought "dishonour on the right worshipful court"; and for the same offence, was also required to pay a fine of four hundred pounds of tobacco.<sup>1</sup> In 1689, Charles Holden, the attorney for the King on the Eastern Shore, was mulcted in the sum of fifty pounds of the same commodity, because he had sworn "passionately" in the presence of the bench.<sup>2</sup>

When the affront to the court consisted, not of insulting words, but of acts of outrageous violence, the justices showed their resentment without the slightest fear. A singular case of this kind occurred, about 1691, in Lower Norfolk, in which the aggressor was a citizen, not of Virginia, but of England. A suit was in progress between Mr. John Porter, Jr., and Captain Christopher Thruston, master of the ship *Little John*. While Porter was addressing the court, Captain John Jennings, of the King's ship *Experiment*, a friend of Thruston, left his boat, and accompanied by a little band of supporters, armed with guns, swords, clubs, and bayonets, walked rapidly towards the court-house. On his way, he met the sheriff of the county, and shaking his cane at him in a violent manner, denounced him as a "rascal," and declared that he "had it in his heart to break his pate." Soon afterwards, entering the court-room, he seized Porter by the hair, and dragging him to the middle of the room, threw him down on the floor and kicked him as he lay there. When the

<sup>1</sup> Henrico County Minute Book, 1682-1701, p. 78, Va. St. Libr.

<sup>2</sup> Northampton County Records, vol. 1683-89, p. 447.

sheriff and the bystanders rushed forward to interfere, Jennings partly drew his sword, and then, surrounded by his men, with their weapons ready to strike, carried Porter off to his boat lying at the landing. One of the justices followed, and on his demanding Porter's instant release, Jennings again drew his sword, and having poured out a flood of "reviling and reproachful language," pushed off from shore with Porter helpless on board. Though Jennings had escaped, the county court was determined that his conduct should not go unpunished; the outrage was at once reported to the General Assembly; which promptly petitioned the Governor and Council to obtain Porter's release, and to institute proceedings for Jennings's immediate prosecution. When, however, the warrants were delivered on board of the *Experiment*, Jennings declined to obey the summons or even to give up his prisoner.<sup>1</sup>

All the cases so far enumerated were of affronts to the court during a sitting of the justices. When the offence occurred elsewhere, and came to their knowledge only by the testimony of others, they do not appear to have acted as summarily as they would have done had the insult been offered in their very presence. When, in 1653, it was reported to the judges of Northampton that Stephen Horsey, of the same county, had publicly spoken of them as "asses and villains," they merely appealed to the Governor and Council to afford them the proper reparation for such an opprobrious attack.<sup>2</sup> In 1662, William Hatton was presented to the county court of York by Edward Wade, a churchwarden of Hampton parish, for declaring, in his hearing,

<sup>1</sup> Minutes of Council, 1691, B. T. Va. No. 20; also recorded in the Minutes of Assembly for May 9, 1691.

<sup>2</sup> Northampton County Records, vol. 1651-54, folio p. 183.

that the membership of that body was composed of "coopers, hogtrough-makers, pedlars, cobblers, tailors, and weavers." Instead of putting Hatton on his trial, and punishing him themselves, the justices simply directed their clerk to procure a warrant ordering the culprit to appear before the General Court at Jamestown at its next session.<sup>1</sup> A casual reflection under like circumstances upon the loose habits of an individual judge in his private life seems sometimes to have been dealt with by the court by only requiring of the person guilty of making the charge a bond that he would not repeat the offence. In such cases, it is quite probable the imputation had not been very serious in its character. In 1695, Robert Tyler declared publicly of Henry Jenkins, a member of the county court of Elizabeth City, that, if he were to pay all he owed, "he would not have a negro to help himself." In resenting this remark, Jenkins asserted in court that the justices ought to consider the civil and military offices held by him, and whether such "slandorous and infamous words" touching his reputation would not, in public opinion, render him unfit to be trusted in performing such duties. Tyler was placed under bond for a year and a day.<sup>2</sup>

If disrespect was shown a justice in his presence, but not while he was sitting on the bench, the ordinary course seems to have been to report the affront, not to the county court of which he was a member, but to the General Court, for punishment. In 1671, Richard Price was charged with "rude, irreligious, and uncivil" conduct in attempting to force his way into the seat allotted in the church of St. Mary's White-chapel to the

<sup>1</sup> York County Records, vol. 1657-62, p. 453, Va. St. Libr.

<sup>2</sup> Elizabeth City County Orders, Dec. 18, 1695.

justices of Lancaster, in which county the church was situated. At the time, two of these justices, accompanied by the high sheriff, were in attendance on the services. When the country court held its next meeting, the sheriff, Edward Dale, was ordered to obtain a warrant from the General Court requiring Price to answer to that body for his "said contempt to God, his Majesty, and his ministers."<sup>1</sup>

The justices showed equal determination in preserving the dignity of their respective courts by prohibiting in the court-room, while they were sitting, conduct that was simply unbecoming; and the fact that this conduct was not intended as disrespect made no difference whatever; nor whether it was indulged in by a judge, or by a citizen drawn to the spot by business or curiosity. In 1663, for instance, an order was adopted by the county court of Northampton imposing a fine of fifty pounds of tobacco upon any justice guilty of smoking at the judges' table during a session of the bench; and the penalty which an officer of the court or stranger was subjected to for the same offence was fixed at thirty pounds of the same commodity.<sup>2</sup> The punishment inflicted in Lower Norfolk was very much severer; the justices of that county adopted an order that, should anyone venture to enter the court-room while the judges were in session, with a lighted pipe in his mouth, he should be arrested at once and carried off to prison.<sup>3</sup> A person committing this offence in the court-room of Lancaster had either to pay a fine of one hundred pounds of tobacco, or to lie in the stocks for the space

<sup>1</sup> Lancaster County Records, Orders Nov. 8, 1671.

<sup>2</sup> Northampton County Records, vol. 1657-64, folio p. 191.

<sup>3</sup> Lower Norfolk County Records, Orders June 15, 1669.



of one hour.<sup>1</sup> In 1691, the justices of Rappahannock sternly reprehended the "rude and uncivilized custom of smoaking tobacco in the court-house during the sessions of court"; they declared that it was greatly derogatory to the respect due the judges as well as a slur on their dignity to permit it; and they imposed a fine of fifty pounds of tobacco on every person who should be found using a pipe in either of the court-houses of the county after the court had convened.<sup>2</sup> In 1667, a citizen of Lancaster, who was quite probably a member of the Quaker sect, was arrested for his "unmannerly" conduct in keeping his hat on his head in the face of the court and refusing to be uncovered.<sup>3</sup> Two years later, a general order was proclaimed by the justices of Lower Norfolk (in which county numerous Quakers resided), that, if any one should come into the court-room while they were in session and decline to remove his hat, he should, for the offence, be committed to prison during their pleasure.<sup>4</sup> Among the rules adopted by the bench of at least one county in the Northern Neck about 1671, was one imposing a fine of a hundred pounds of tobacco on every person guilty of this act of disrespect; and in case of inability to pay such a fine, he was to lie in the stocks for the space of an hour.<sup>5</sup> In order to preserve the county courts from

<sup>1</sup> Lancaster County Records, Orders Nov. 8, 1671.

<sup>2</sup> Rappahannock County Records, vol. 1688-92, orig. p. 295.

<sup>3</sup> Lancaster County Records, Orders Nov. 13, 1667.

<sup>4</sup> Lower Norfolk County Records, Orders June 15, 1669. The same offence in Northampton County at this time was punished by the Sheriff's seizing and retaining the hat until the culprit had paid thirty pounds of tobacco; if it was the second offence, fifty pounds was the penalty; Northampton County Records, vol. 1657-64, folio p. 191.

<sup>5</sup> Lancaster County Records, Orders Nov. 8, 1671.

the disrepute of drunkenness among the justices, it was expressly provided in February, 1676-77, that, should any one of them become "notoriously scandalous upon court days at the court-house" by being disguised with drink, he was to be compelled by his associates on the bench to pay the sum of five hundred pounds of tobacco.<sup>1</sup>

<sup>1</sup> We have noted only one conviction under the terms of this statute; this occurred in Lancaster County; see Records, Orders Nov. 15, 1677.

## CHAPTER VI

### County Court: Frequency of Terms

AS the county court was known at first as the monthly court, it would seem that the original plan was that there should be held in each shire at least one term in the course of every thirty days; but, in 1642, an Act of Assembly provided that, unless extraordinary occasions arose requiring greater frequency, this court should convene only six times a year; that is to say, not more often than once in the course of every two months. It was left to the majority of the justices of each court to decide whether the public business called for an extra term. This general regulation was re-enacted in 1657-8<sup>1</sup>; and it was still in force in 1680, in which year the commissions of the different sets of local judges throughout the Colony required that two months should not be allowed to pass by without their holding a term in their respective counties.<sup>2</sup> As late as 1691, Captain John Jennings, who was familiar with the history of Virginia, declared, in a petition to the king, that "from time out of mind" these county judges had been impowered to determine at least once every two months, all suits between

<sup>1</sup> *Laws of Virginia*, 1642-3, Clerk's office, Portsmouth, Va.; Henning's *Statutes*, vol. i., pp. 272, 462; see also commission of justices, Lower Norfolk County Records, vol. 1646-51, p. 171.

<sup>2</sup> Henrico County Records, vol. 1677-92, orig. p. 134.

party and party<sup>1</sup>; and the correctness of this statement as relating to the time when it was made was shown by the commissions which Nicholson, during that year, issued to the justices of the county courts.<sup>2</sup>

The county court was authorized to convene in extra term whenever it was thought to be advisable for the transaction of special and urgent business. It often met at the earnest solicitation of a single person. For example, Captain Robert Jordan in 1669 complained to Mr. Lemuel Mason, a member of the quorum in the Lower Norfolk commission, that Henry Spratt owed him a large quantity of tobacco, and that it would be highly prejudicial to his interests should his ship be detained in the country until the next regular term of the justices, when he would alone be able to recover the amount due him; he, therefore, urged that a special term of the court should be held to try the suit; and there being so good a reason for acceding to his request, Mason commanded the sheriff to summon the justices to meet at the court-house at an early day to hear the case. Spratt was also to be present.<sup>3</sup> In 1682, Captain William Knott, another sea-captain, was, on the eve of his departure, served with a notice requiring him to appear at the next meeting of the court for the same county. He at once besought Francis Sayer, a member of the quorum, to call an early session of that court to prevent the complete "overthrow of his voyage"; and in compliance with this petition, the justices were ordered to convene on the following Thursday for the

<sup>1</sup> Jennings's Petition to the King, B. T. Va., 1691, No. 26.

<sup>2</sup> See Henrico County Commission for 1691 in Records, vol. 1688-97, p. 198, Va. St. Libr.

<sup>3</sup> Lower Norfolk County Records, Orders Jan'y 21, 1669.

purpose of trying the case with dispatch.<sup>1</sup> From the records it would appear that special terms of the county court were very frequently held at the like earnest solicitation of wealthy and influential merchants, the demands of whose business so often made it important for them to leave for England by the first ship. As the trading fleet, as a rule, sailed only at one season of the year, detention in the Colony, because it was necessary either to press or answer a suit, would often have worked great hardship by causing the merchant to lose the only convenient and timely vessel.<sup>2</sup>

Special courts were frequently held to settle, not claims of the sea-captain against some citizen of the Colony, or of some citizen against the sea-captain,—instances of which have been mentioned,—but differences that had occurred between the sea-captain and his own men about the performance of their contract; such a case arose in Lower Norfolk between the owner of the *Adventure* and John Dixon and John Clarke, whom he charged with having been “deficient” in carrying out a charter-party made with them in “a late voyage.” It was necessary to decide the matter so quickly that the justices were summoned to meet in a special term at the court-house on the following Monday.<sup>3</sup> So important did the General Assembly deem it that all controversies between seafaring men should be deter-

<sup>1</sup> Lower Norfolk County Records, Orders Aug. 17, 1682.

<sup>2</sup> Captain Jennings's Petition to the King, B. T. Va., 1691, No. 26.

<sup>3</sup> Lower Norfolk County Records, Orders Sept. 17, 18, 1689. In 1683, a private court, as it was called, was held at the residence of Mr. John Newton, a justice of Westmoreland county, for the settlement of a dispute touching a charter-party and hired ship. The question involved required dispatch; see Westmoreland County Order Book, 1675-88, p. 313.

mined at the earliest opportunity possible, without waiting for a regular term of court, that an Act was passed requiring the justices to hold a special one for that purpose, without leaving it to their discretion whether they should do so or not.<sup>1</sup>

The frequency with which the different county courts met in extra terms for the settlement of some special business in which the ordinary citizen was interested, is brought to light in the various surviving county records. The history in this particular of three or four counties is the history of all. In 1637 and 1638 respectively, for which the entries are complete, the county court of York convened at least nine times; and in 1641, ten. During this last year, it was only in March and April that it failed to come together. It held seven terms in 1665 and 1666 respectively, and in 1667, nine. These figures represent the general averages from year to year down to the close of the century. The records of Elizabeth City county are complete only for the last few years of this period; in 1695, its justices assembled on ten different occasions; in 1696, on twelve; but in 1697 and 1698 respectively, on six alone. In 1699, the number of meetings held had increased to eight. In Essex, the court met, between January, 1697, and February, 1698, seven times; and as often between March, 1698, and January, 1699; and this seems to have been the average number of terms during the short period in this county's history belonging to the Seventeenth century. Going back to the first years in the history of one of the oldest of the other counties,

<sup>1</sup> See reference to this Act in Lower Norfolk County Orders, Sept. 17, 18, 1689. It was contrary to the Colony's interests that there should be any delay in the sailing of the ships transporting the annual crop of tobacco to England.

namely, Accomac, it is found that, in 1634, the year in which the system of shires was inaugurated, the county court met on six occasions; in 1635, on seven; and in 1637 and 1639 respectively, on nine. In Northampton, on the other hand, there were ten terms of the county court in 1642, and eleven in 1644; in Henrico, seven during 1695 and 1696 respectively, and ten during 1699. In the course of the twenty-two years represented in these enumerations for York, Elizabeth City, Essex, Accomac, Northampton, and Henrico counties, the average number of terms held by their justices was eight within a period of twelve months; and this was, no doubt, the average number held in each county in the remaining parts of the Colony.

In inquiring as to the dates on which the county court's regular terms were held, it will be found that they differed but little from year to year. The county court of York, previous to 1667, convened about the 24th or the 25th of the month; the county court of Elizabeth City, about the 18th or 20th; that of Essex, about the 10th or 12th; and that of Rappahannock, between the 1st and 5th. In Northampton, the date of the term varied from the last day of one month to the first of the next, whilst in Henrico the county court met about the first. From this it is apparent that the county courts, in the dates of their respective terms, conformed very closely to the regulations of the law of 1642, which sought, as far as possible, to fix a separate date for each county; for instance, by the text of that law it was provided that the county court should convene in Henrico on the first day of each month; in Charles City on the 3d; in James City on the 6th; in Isle of Wight on the 9th; in Upper Norfolk on the 12th; in Lower Norfolk, on the 15th; in Elizabeth City on the

18th; in Warwick on the 21st; in York on the 24th; and in Northampton on the 28th.<sup>1</sup> Whatever variations occurred between the date fixed by law for the meeting of a county court, and the date on which it actually met, was due to the intervention of a Sunday or a holiday.

The regular hour at which the county court met ranged from seven to ten o'clock in the morning; and if the business requiring attention was of an urgent nature, an additional session was frequently held at night.<sup>2</sup> What was the average number of justices who were in attendance? In York county, previous to 1667, about five were present at every session of the court; this was also the case in Northampton county; and also in Henrico, Elizabeth City, and Accomac. It is probable that this number represented the average attendance of justices throughout the Colony during the whole century; in other words, one half of the members of each court, when the number was ten, were always present on the bench during the course of a term, and more than one half during the period when the membership did not exceed eight. That the attendance was not larger was due to the fact that the great majority of the justices were advanced in life, and the distance which they had to traverse in order to reach the court-house was generally very long; in those times almost the only means of getting about the country by land rapidly was on horseback; but this means, when the weather was bad and trying, as was so often the case in winter, increased the exposure during a journey of so many miles.

<sup>1</sup> MS. Laws of Va., 1642-3, Clerk's office, Portsmouth, Va., p. 16.

<sup>2</sup> An allowance for candles for the justices' use at night sessions is often found entered in the county levies; see Essex County Records, Orders Nov. 11, 1695; Lancaster County Records, Orders for September, 1658, vol. 1656-66, p. 60.



If there was any irregularity in the justices' attendance, it was not encouraged by the lack of strict regulations to prevent it: As early as 1647, it was provided by law that no member of the court should remain away from its meetings without the consent of his associates on the bench; if aware that he would be compelled to be absent some future term, he had to obtain special leave to stay away on that occasion; and if he continued absent from term to term without adequate excuse, he was required to pay for each at which he failed to be present a fine of three hundred pounds of tobacco.<sup>1</sup> About ten years after the passage of this Act, the justices of Northumberland adopted an order that, should any one among them remain away from a term of the bench without good reason, he should be forced to pay a fine of six hundred pounds of the same commodity. It seems that the court had been constrained to adjourn repeatedly owing to the small number of judges present; and this had occasioned great expense to all the justices who were in attendance, as well as to those persons who had repaired thither in the expectation of being able to settle their legal affairs.<sup>2</sup> In 1662, the court of Northampton mulcted one of its members, William Spencer, in three hundred pounds of tobacco on the ground that he had returned home "without lycense given him before ye public business was ended."<sup>3</sup>

Some years later, complaints were heard of unnecessary adjournments of county courts, apparently

<sup>1</sup> Hening's *Statutes*, vol. i., p. 350. The expression used is "300 lbs. for each absence." This may have signified absence from each sitting of the court during the progress of the term, which would have made the amount of the fine much larger.

(?) <sup>2</sup> Northumberland County Records, Orders Jan'y 21, 1657.

<sup>3</sup> *Ibid.*, vol. 1657-64, folio p. 171.

from day to day, or week to week; and in the end, the General Court intervened with a general order designed to stop the evil.<sup>1</sup> After this, the number of fines imposed for absence from the bench at the terms of the county courts became much more frequent. At one term of the Essex court in 1695, four judges were mulcted in large sums of tobacco in consequence of their failure to be in attendance.<sup>2</sup> No session of the county court was held in Westmoreland in July, 1692, because two of the justices were then performing their duties at Jamestown as members of the House of Burgesses; several others were compelled to be present at the General Court, convening at the same place; whilst the remainder were incapacitated by sickness.<sup>3</sup> Occasionally, a term of the county court was held by only two justices, one of whom, however, was required to be of the quorum.<sup>4</sup> During the course of Nicholson's administration,—it having become a habit with some of the magistrates to pen legal orders in their own homes, which were afterwards entered by the clerk in the judge's absence,—a regulation was adopted that all such orders must be read in the open court-room and approved before they were made a part of the permanent records.<sup>5</sup>

<sup>1</sup> Henrico County Records, vol. 1677-92, orig. p. 375.

<sup>2</sup> Essex County Records, Orders March 10, 1695.

<sup>3</sup> Westmoreland County Records, vol. 1690-98, p. 68. We find the following entry in the Lower Norfolk County Records: "The General Court and Assembly falling out so unexpectedly to ye commissioners' expectations, and many of them being compelled to make their appearance at James City, the court have thought it requisite to adjourn till next county court, etc." See Records, Orders Sept. 27, 1660.

<sup>4</sup> Rappahannock County Records, Orders Jan'y 6, 1685-86.

<sup>5</sup> B. T. Va., vol. vii., p. 117.

## CHAPTER VII

### County Court: The Court-Houses

WHERE did the different county courts come together? Let us begin with that of Lower Norfolk, as one of the oldest of them all. In 1642, when, as we have seen, the Governor was empowered to appoint in each county a place for the meeting of its court, it was determined that the sessions of the justices of Lower Norfolk should be held at William Shipp's tavern twice to every once they were held at Lynnhaven.<sup>1</sup> Three years afterwards, the justices are found convening at the residence of Robert Hayes, who, no doubt, was under contract to supply them regularly with accommodations on these occasions.<sup>2</sup> In 1649, all the meetings of the county court took place in private houses.<sup>3</sup> Six years later, it having been arranged that the members of the court should hold one half of their sessions at one house, they selected Samuel Gaskins's home, where, for some years, they had been in the habit of sitting at least once in the course of twelve months<sup>4</sup>; and here they continued to come together every alternate term until 1660, by which time they had grown so impatient with the

<sup>1</sup> Lower Norfolk County Records, Orders August 15, 1642.

<sup>2</sup> *Ibid.*, Orders Aug. 15, 1645.

<sup>3</sup> *Ibid.*, vol. 1646-51, p. 126.

<sup>4</sup> *Ibid.*, vol. 1656-66, pp. 55, 61.

annoyances attending sessions held in private residences and taverns that they decided to build a court-house, where they might conveniently assemble, and all the records be safely kept. A committee was appointed to visit the plantation Thomas Hardinge had offered as the site; and it must have proved satisfactory on inspection, for not many months afterwards, Hardinge entered into a contract with Bartholomew Engobreitson, by the terms of which the latter, at the former's expense, was to erect a building on the place for the county's use.<sup>1</sup> By 1663, the court-house seems to have been completed, for, in the course of that year, an allowance was made in the levy for Nicholas Emerson's benefit in return for his having furnished the doors, tables, and benches for the court-room. The building itself appears to have been about forty-five feet long, and was no doubt constructed, in its framework, of wood, with brick chimneys and foundations.<sup>2</sup> The levies of 1674 and 1675 each imposed a small tax for the purchase of nails and planks for its repair. A considerable area of land was attached to this court-house, which, being in part rented out, contributed some income towards the expense of keeping the building in a good state of preservation.<sup>3</sup>

The old court-house had, by 1687, fallen into such a ruinous condition that the justices decided that it was necessary to erect a new one.<sup>4</sup> They finally determined to build two, one of which was to be situated on the land laid off for a town on Elizabeth River, and the other on the plantation belonging to Edward Cooper,

<sup>1</sup> Lower Norfolk County Records, vol. 1656-66, pp. 283, 335.

<sup>2</sup> *Ibid.*, pp. 335, 379.

<sup>3</sup> *Ibid.*, Orders Oct. 16, Nov. 15, 1678.

<sup>4</sup> *Ibid.*, Orders Nov. 19, 1687.

who resided on the eastern side of Lynnhaven. The court-house to be erected on Elizabeth River was, according to the specifications adopted, to be constructed of brick; to be thirty-five feet long by twenty feet wide in its interior; and to have a pitch of ten feet. The walls were to be in part plastered, and in part planked. In the lower room, two large fire-places were to be built, and close by one of these was to be raised the stairway leading up to the second floor. The court-house to be erected at Lynnhaven was to be less substantial, for it was to be constructed, not of brick, but of timber.<sup>1</sup> At a later date, the provisions for the one situated on Elizabeth River were somewhat altered; the interior of the building, under the new arrangement, was to be forty feet in length by twenty feet in width; and the whole was to rest on cedar posts and ground sills; one gable end alone was to be constructed of brick; and at this end was to be built a fire-place.<sup>2</sup>

A short time after Princess Anne county was created, an order was adopted by its justices looking to the early erection of a court-house. This building was required by the specifications to be thirty-five feet in length and twenty in width. The principal room (where, no doubt, the judges were expected to meet) was to be twenty feet square and ceiled and arched with clapboard; the second and smaller room on the ground floor was also to be ceiled and arched in the same manner, and at one end of it a chimney built, alongside of which a stairway was to be placed. The chief entrance to the court-room was to be through a great door let into the gable end of the house; the bench and bar were to face this entrance; whilst at either end

<sup>1</sup> Lower Norfolk County Records, Orders Sept. 17, 1689.

<sup>2</sup> *Ibid.* Orders Nov. 16, 1689.

of the bar there was to be situated in each side wall a large window with four panes; and there was also to be a window situated over the great door. The entrance to the small room from the outside was to be approached by a porch five feet square, with posts and railing.<sup>1</sup> This court-house, all the details of which were so minutely considered, does not appear to have been completed until 1696; in the meanwhile, it is probable that the old court-house standing at Lynnhaven continued to be used during the larger part of the time, although, in the end, portions of the old building were transferred to the new.<sup>2</sup>

One of the earliest recorded meetings of the Henrico monthly court was held, in 1639, at a spot known as Fort Henry; but there is reason to think that this was

<sup>1</sup> Princess Anne County Records, Orders for 1692, vol. 1691-1709, p. 43.

<sup>2</sup> The following allowances were made in the levy of Princess Anne County for 1696 for the construction of a court-house. A new jail was erected at the same time, and to some extent the outlay for the two is given together in the entry quoted: "To Timber for the frame of court house and prison, 1000 lbs. Tobo.; Digging Post holes for the court house, 30 lbs. Tobo.; 2850 Boards for outside work, 1425 lbs. Tobo.; Bringing above down, boating them; To Joseph Godacres loading & carting them, 500 lbs. Tobo.; Taking down the table, benches and bar at old Court house, bringing here and setting up, 100 lbs. Tobo.; Taking up plank at old Court house, boat and hands bringing it to Court house and carting, 400 lbs. Tobo.; 650 feet of plank of Adam Keeling, 650 lbs. Tobo.; To a boat and hands 2 days fetching 400 feet of it to Godacres' landing, 130 lbs. Tobo.; To carting it thence to Court house, 50 lbs. Tobo.; One day carting sleepers to court house, 60 lbs. Tobo.; 6000 8d. Nails, 480 lbs. Tobo.; 1000 10d. nails, 100 lbs. Tobo.; 1000 4d. nails, 45 lbs. Tobo.; 500 20d. nails, 150 lbs. Tobo.; 1500 Boards for inside @ 600 lbs. p. 1000, 900 lbs. Tobo.; 2 bbl. of tar and bringing same, 300 lbs. Tobo.; Carting court house frame, 410 lbs. Tobo.; To superintendence, 800 lbs. Tobo."; See Order Book 1691-1709, p. 119.

not the only place where the court convened.<sup>1</sup> About 1683, it seems to have occasionally assembled at the home of one of the justices; for instance, in the July of that year, it came together at Col. William Byrd's residence, which, at this time, was situated at the Falls, near the county's extreme western boundary. In the following month, however, the judges met at Mr. Thomas Cocke's tavern.<sup>2</sup> Five years afterwards, there was certainly a court-house standing in Henrico, for it became necessary to repair it, an indication that it had been in existence for some time. By the terms of the court's agreement with John Fail, a carpenter, new girders were to be put in the building, and also new rafters wherever the old were found decayed; the house was to be resingled; and two windows were to be cut into the wall at the gable end; the whole floor outside of the bar to be relaid, and within the bar partially reconstructed; whilst new blocks were to replace the old under the house and the ground sills to be repaired and boarded down to the ground. Fail, who was to furnish the plank and nails needed in this work, was to receive seven thousand pounds of tobacco in compensation, and also all the material taken out of the house in altering it.<sup>3</sup> This court-house was situated at Varina on James River. In 1690, Capt. William Soane, who kept the tavern at that place, obtained from the court permission to use the loft as a lodging room, provided that, during the sessions of the bench, it remained "clear and undisturbed" for the use of the several juries.<sup>4</sup>

<sup>1</sup> Henrico County Records, vol. 1677-92, orig. p. 266.

<sup>2</sup> Henrico County Minute Book, 1682-1701, p. 55, Va. St. Libr.

<sup>3</sup> *Ibid.*, p. 220, Va. St. Libr.

<sup>4</sup> *Ibid.*, 1682-1701, p. 259, Va. St. Libr.

In the early history of York county, the justices were in the habit of meeting at each other's houses in turn; in 1633, for instance, the sessions for July, August, September, and October were held at Utimaria, Colonel John Utie's residence; those for 1635 at Colonel John Utie's, Mr. John Chisman's, and Mr. John Chew's; for 1636, at Captain Nicholas Martian's, Mr. Richard Townsend's, Mr. William Pryor's, Mr. Robert Felgate's, and Mr. Christopher Wormeley's, and also at the homes of the justices previously named.<sup>1</sup> In 1676-7, the father of Thomas Hansford, the political martyr, devised by will a tract of land spreading over seventy acres to be used as the site for a court-house<sup>2</sup>; but two years later, the justices were still holding their regular meetings in private residences; sessions then began to be held at French's Ordinary, or at what was known as the Halfway House, situated not far from that well known tavern. By the Act of 1691, the judges of the county court were authorized to purchase fifty acres for the establishment of a port at Yorktown; and here a substantial court-house was, in the course of a few years, erected. Gov. Nicholson, with characteristic public spirit, seems to have contributed five pounds sterling towards its construction. The building's entire cost amounted to about twenty-eight thousand pounds of tobacco; and for this, allowance was made in the levy of 1697. In the following March, the county weights, stocks, pillory, and whipping post were removed to Yorktown from the "old court-house."<sup>3</sup>

Several of the largest counties before their division

<sup>1</sup> York County Records, vol. 1633-94, pp. 1-5, Va. St. Libr.

<sup>2</sup> York County Grievances, 1676-7, Winder Papers, vol. ii., p. 87.

<sup>3</sup> For these details, see *William and Mary College Quart.*, vol. ii., p. 17.



lay on both sides of a great river; this was notably the case with New Kent, Lancaster, and Rappahannock, and, in a lesser degree, with Isle of Wight. In 1657-8, a difference arose among the four members of the House of Burgesses from Isle of Wight as to whether the county should be divided, or should remain undivided, with the two courts retained; but it was finally decided that no change should be made, as, on the whole, contributing more to the people's convenience.<sup>1</sup> There were two court-houses in the original Rappahannock county, one of which was known as the "northside," and the other as the "southside." To the southside court-house, a considerable plantation seems to have been attached. This plantation, which contained an orchard as well as arable land, was rented out in part, first to Peter Taylor, and afterwards to John Warriner; Warriner, in 1687, was empowered to occupy the court-house as a dwelling house, as had been done by Taylor before him; and in return for this use of the building, was to keep it in good repair, preserve the fence surrounding the orchard, and supply the justices, when the bench was in session, with fire-wood and other necessities. Four years afterwards, Robert Coleman was placed in charge, with directions to repair the existing benches and restore those which were wanting; and also to erect an entire set of new banisters. The court, about 1685, made a similar arrangement with Thomas Bradley for work to be done in the interior of the northside court-house; he was particularly required to run a line of banisters across the room in order to separate that part of it where the judges sat from the rest of it; within this area, a table stood, and next to this table, there was to be placed a new seat for

<sup>1</sup> *Va. Maga. of Hist. and Biog.*, vol. viii., p. 393.

the President of the court. In addition, in order to afford more light to the apartment, Bradley was to enlarge the window looking out towards the orchard, and also to cut in the wall a second window, which was to be four feet in length.<sup>1</sup>

Henry Awbry and William Moseley were appointed by the justices of Essex, in 1693, to select a site for the new court-house rendered necessary by the recent creation of the county; and they were also empowered to buy for the county's use the spot which should be chosen by them. The building erected must have been almost entirely of wood, for it seems to have been completed in a rather short time; the purchase of the ground was made probably in December, 1693, and by the following September, the structure had reached such a stage that the justices were able to name it as their place of meeting for the October term of the court. A committee chosen at the same time was instructed to inspect the building with a view to reporting as to "its true value and worth." In the levy for November, nine thousand pounds of tobacco were allowed the contractor, Daniel Deskin; but until the court-house was actually finished, the amount was to remain in the sheriff's hands. Essex had previously formed a part of Rappahannock county, and what was known as the "southside court-house" had stood within its confines. Deskin was permitted to take all the material from the old building which he thought would be serviceable in the construction of the new; and after it was completed and paid for, he was placed in permanent charge. His chief duties were to keep

<sup>1</sup> For these details see Rappahannock County Records, Orders Nov. 6, 1684; May 7, 1685; April 1, 1691; also vol. 1686-1692, orig. p. 58.

the interior in a clean condition, to fell the trees in the immediate vicinity, and when the justices sat at night, to supply them with candles. In June, 1699, it became necessary to renew the benches in the court-room, and to add shutters to the windows. This work was done by John Sorrell.<sup>1</sup>

Lancaster, before the county of Middlesex was formed from it, lay, like the original Rappahannock county, on both sides of the Rappahannock River; as early as 1655, provision was made in its levy for the construction of two court-houses, one of which was to be situated on the north side, the other on the south side of that stream. The allowance amounted to ten thousand pounds of tobacco. A site for the northside court-house was chosen at Corotoman; and the contract for erecting it was undertaken by Mr. John Carter. Until the several buildings were ready for use, the justices continued their previous custom of meeting at the residences of the different members of the bench in turn, or at the home of some person who probably kept an ordinary; in 1656, fifteen hundred pounds of tobacco were granted Mr. Merryman as remuneration for their entertainment during two terms; and five hundred pounds to Mr. John Philip for a like entertainment, but perhaps for one term only. When the permanent court-house at Corotoman was finished, Domine Therriott was licensed to occupy it as a tavern for the bench's accommodation while in session, and also of the public in general; but at a later period, it was probably thought that such use of the building was unbecoming, for, in 1681, a custodian was employed whose duties consisted of keeping the interior in a clean condition, repairing the

<sup>1</sup> See for these details, Essex County Records, Orders Dec. 12, 1693; Sept. 10, Nov. 9, 1694; Nov. 11, 1695; June 21, 1699.

walls and chimneys whenever necessary, and providing fire-wood for the judges in term time, and also water and candles.<sup>1</sup>

Middlesex, as already stated, was originally that part of Lancaster which was situated on the south side of the Rappahannock River. In 1684, the justices of this county made arrangements for the erection of a substantial court-house; and Ralph Wormeley and Robert Beverley, two very conspicuous and wealthy citizens, were appointed to give a general supervision to the various details in carrying out the undertaking. The walls were to be constructed of brick, with a frame roof to be covered with cypress shingles. To lighten the public burden to be imposed in building this new court-house, it was determined to spread over two years the taxation necessary to defray the expense:—the levy for each was fixed at fifty-five pounds of tobacco for every tithable found in the county. For some years, nothing seems to have come of this proposal; in an order dated as late as February, 1692–3, it was mentioned that the building had not yet been completed; but such progress had been made in its construction that twenty-three thousand pounds of tobacco had been already appropriated for the remuneration of the contractors. The court-house of Middlesex stood on part of the land laid off at Urbanna as the site of the town called for by the recent Act of Assembly.<sup>2</sup>

<sup>1</sup> See Lancaster County Records, Orders Feby. 6, 1654, Dec. 7, 1655; Levy for November, 1656; Orders Feby. 4, 1656; Orders Dec. 14, 1681.

<sup>2</sup> Middlesex County Records, Orders Feby. 3, 1684; Levy for Oct. 4, 1686; Orders Aug. 1, Nov. 14, 1692; Feby. 18, 1692–93. The order for Feby. 3, 1684, required that the Middlesex court-

In the course of 1673, the justices of Westmoreland contracted with Captain John Lee for the erection of a court-house in that county. By the terms of the specifications, the structure was to be twenty feet wide and thirty-five feet long. A space equal to thirty by twenty feet was to be reserved for the court-room; and in the area occupied by the remaining five, a stairway was to be built as a means of reaching the "chamber" situated on the next floor. The floors were to be laid with sawn planks, and both rooms carefully ceiled. The space allotted to the judges in the court-room was to be separated from the rest of the apartment by a railing of "turned balustrades," whilst for the justices' accommodation there was to be provided a long table, behind which they were to sit in a line during the sessions of the bench.<sup>1</sup> This scheme of erecting the court-house must have ended in failure, for five years afterwards a new contract was entered into, under whose terms the building was to be forty-six feet in length by twenty-four in width. Of this area, a space equal to twenty-five by twenty-four feet was reserved for the court-room. There were to be two apartments situated on the second floor, the one designed for occupation by the clerk of the court, the other probably for the convenience of the juries. The seats of the justices were to stand on a sort of platform, extending the width of the court-room, and divided from the rest of the flooring by a balustrade. In the middle of this elevated area, the chair of the presiding judge was to be placed, and a special desk was to be assigned for his use. As the specifications called only for

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house should be as substantial and as large as the "brick court-house lately built in Gloucester county."

<sup>1</sup> Westmoreland County Records, Orders Oct. 20, 1673.

brick chimneys, it was evidently intended that the body of the court-house should be constructed of timber. It would appear that the building was completed sometime previous to 1684, for, in the course of that year, John Minor petitioned for a license to keep an ordinary near the court-house; and the right was granted on condition that he should sell no kind of strong liquor to any person whatsoever either in the morning before the court met, or while the court was in actual session. Four years later, Minor was in charge of the building; as the court-room was then found to be very cold as winter approached, the justices directed him to procure glass to fill in the broken window panes; and he was also required to provide "cases" made of wood, which might be opened or shut according to the state of the weather.<sup>1</sup>

There being no court-house in Northumberland in 1658, the judges, during that year (as they had, no doubt, previously done), met in a house probably used as a public tavern. Five years afterwards, a court-house was in the course of erection, but, until it was finished, the justices held their sessions at the residences of two of their number, namely, Colonels Richard Lee and Peter Ashton. The building was situated at Fairfield, and was probably constructed entirely of wood, as it became necessary in 1680-1 to erect a new one. In the contract with Mr. John Hughlett, who undertook it, it was specified that this new court-house should be thirty-five feet long, twenty-two wide, and ten feet to the plates, with a single chimney outside, and with boarded ceilings. Besides the court-room, there was to be a room for the juries and witnesses

<sup>1</sup> Westmoreland County Records, vol. 1675-89, p. 145; vol. 1675-88, pp. 313, 699; also Orders June 25, 1684.

respectively. The justices' seats were to stand on a low platform shut off from the remainder of the floor by a balustrade.<sup>1</sup>

In 1692, James Orchard contracted with the justices of Richmond county for the erection of a new court-house to take the place of the old one, situated in a neck of land reached only by a long and circuitous road. The spot selected for the new structure had formerly belonged to Orchard himself, and had been purchased as a very convenient site. The whole tract in which an interest was acquired covered as many as seventy acres, a considerable estate in itself. Orchard agreed to erect a building twenty feet in width and thirty in length, with an inside chimney instead of an outside one as usual; it was to be ten feet in pitch, and to have double rafters, studs with four girders, ground sills, and exterior posts. The contractor, as his remuneration, was to receive a clear title to the ownership of the old court-house and the plantation of seventy acres attached to it.<sup>2</sup>

As early as the year 1648, the terms of the county court of Northampton were held at two places in alternation. Six years afterwards, the justices adopted a resolution that they would meet on the twenty-eighth day of each month in Mr. Walter Williams's residence, which was situated near Hungar's Creek,<sup>3</sup> unless convenience or urgent business should require a special court to convene elsewhere. The erection of a permanent court-house was, in 1664, taken into consideration by the court, and "ye towne fields betwixt ye Ware

<sup>1</sup> Northumberland County Records, vol. 1652-66, p. 188; also Orders Nov. 22, 1658; March 11, 1680-1.

<sup>2</sup> Richmond County Records, Orders July 7, 1692.

<sup>3</sup> This was described in the order as "Ye accustomed place."

Creek and ye Maine Creek" was chosen as the most appropriate site. It was specified in the contract for the new building that it should be twenty feet long by twenty wide, and nine feet in pitch. The work, which was undertaken by Colonel William Waters, must have been finished by 1671, for, in the course of that year, the court gave an order for the erection of a bar as a means of keeping back the crowd of people whose too great pressing forward had disturbed the quiet and decorum of the sittings. Six years later, an Act of Assembly having authorized the voters of the county to choose a site for a new court-house, the freeholders and householders, who alone enjoyed the suffrage, were summoned by the justices to meet at the old court-house, on an appointed day, to declare their preference.<sup>1</sup>

The justices of Accomac were, for many years, in the habit of holding the terms of their court at Pungoteague in the tavern belonging to John Cole, who made no charge for its use for that purpose. When, in 1677, it was decided to erect a court-house at such a place as the majority of the freeholders should prefer, Cole, reminding the judges of his liberality, asserted that, having recently purchased the Freeman plantation, he was sure that it would offer a very convenient site for the projected county seat. As an additional inducement towards its selection, he announced his readiness to furnish thirty thousand bricks for the building's construction, and also all the timber which would be needed. These bricks, it seems, were to be burned on the spot by James Ewell, who already stood in

<sup>1</sup> Northampton County Records, vol. 1645-51, p. 173; vol. 1654-55, p. 4; vol. 1657-64, folio p. 191; vol. 1664-74, p. 110; vol. 1674-79, p. 203.



Cole's debt to that extent. Cole, in order to influence the justices and voters further in favor of his proposal, offered to fit up for the court's use until the court-room was finished, a house which was already standing on the land; and for the accommodation of the persons who would attend the sessions in this interval, he expressed his willingness to build temporary shelter. Three years later, the projected structure had not been completed, for, in 1680, we find an order of court directing Major Charles Scarborough to engage workmen at once, and to proceed with the building of a new court-house on the land chosen by the General Assembly as the most desirable site for the county town. In 1683, a called meeting of the justices took place at Mr. John Wise's, a probable indication that, even as late as this year, the undertaking had not been concluded. What were described as private courts, however, were often held at some member's residence even when a court-house was in existence, simply because, for the special purpose in view, it happened to be more convenient.<sup>1</sup>

The various details presented in the previous para-

<sup>1</sup> For John Cole's letter, dated Dec. 20, 1677, see Accomac County Records, vol. 1676-8, p. 97. Though there seem to have been in Accomac facilities for making bricks in the largest quantity, nevertheless they appear to have been occasionally imported. In April, 1677, the year when Ewell was to burn the thirty thousand mentioned in the text, the ketch *Grocer's Adventure* of Hull, England, arrived at Chekanessecks, "having a great many bricks to unload," as we are informed by the records. This is one of the few instances in which there is fairly trustworthy proof of the importation of brick into the Colony. It is possible, of course, that these bricks were brought into Accomac from another part of Virginia, where the ship had previously touched; see Accomac County Records, vol. 1678-82, pp. 65, 66. For details in text, see Records, vol. 1676-78 p. 71; vol. 1678-82, pp. 153, 181; vol. 1682-97, folio p. 19.

graphs are of interest and value as showing the general character of the court-house of the Seventeenth century; the material of which it was built; the dimensions and contents of its different rooms. As we have seen, there were few court-houses in these early times which, with the exception of the chimneys, were not constructed entirely of timber. Nevertheless, as may be inferred from the descriptions given, the court-room was always a large apartment, well lighted at all seasons, and in winter well heated; with an extended platform to afford a seating becoming the judges' dignity; and with a balustrade to restrain the forward pressure of the numerous people attending the different sessions. Though, in the beginning, the justices were in the habit of using private residences and even taverns as places of meeting, yet as soon as the resources of each county justified it, a court-house was erected, with ample accommodation for the general public as well as for the officers and members of the court. At the end of the century, there was probably not a single county lacking in a permanent court-house, substantially built, and situated conveniently for most of the inhabitants.

## CHAPTER VIII

### County Court : Its Jurisdiction

WHAT was the extent of the jurisdiction exercised by the men who administered the law in these different county court-houses? When the monthly court was established in 1619, its object, as already stated, was expressly declared to be to do justice "in redressing all small and petty matters."<sup>1</sup> The new court was set up, as we have before pointed out, in order to deal with legal business, both civil and criminal, which the General Court could not attend to conveniently, or even attend to at all, owing to the rapid increase and spread of the population. No one tribunal could pass properly upon such a growing number of legal cases even if that tribunal had moved from neighborhood to neighborhood in the effort to determine them at the smallest expense to the litigants practicable. The Act of March, 1623-4, provided that the monthly court should settle finally all controversies involving an amount or a subject not exceeding one hundred pounds of tobacco in value; and also punish all small criminal offences.<sup>2</sup> Five years afterwards, these limitations to its exclusive jurisdiction were, by a second Act, again laid down, and the justices were

<sup>1</sup> Colonial Records of Virginia, State Senate Doct. extra, 1874, p. 81.

<sup>2</sup> Henning's *Statutes*, vol. i., pp. 125, 128.

expressly prohibited from deciding any question that placed either life or limb in jeopardy.<sup>1</sup> When, in the course of February, 1631-2, monthly courts were established in the more remote parts of Charles City and Henrico counties, the members of these courts were impowered to enter a final judgment in all suits not involving an amount or a subject more than five pounds sterling in value; and they were also directed to inquire into petty crimes, to ensure the safety of the people, and to maintain peace. The extension of their right of final determination to five pounds sterling was probably without counterpart elsewhere in the Colony at this time, and was granted to the remote settlements of these two counties merely because their greater distance from Jamestown rendered an appeal to the General Court so peculiarly expensive and inconvenient.<sup>2</sup>

In 1634, the General Assembly adopted ten pounds sterling as the general amount to which the power of final determination on the monthly court's part was to be restricted<sup>3</sup>; in other words, if the suit decided by it involved more than ten pounds sterling, the defeated litigant, should he be dissatisfied with the manner in which the judgment had gone against him, possessed the right to make an appeal to the General Court; but if the sum fell below ten pounds, the judgment of

<sup>1</sup> Randolph MS., vol. iii., p. 211; Hening's *Statutes*, vol. i., p. 132.

<sup>2</sup> Hening's *Statutes*, vol. i., pp. 168, 224. In 1641, the General Court entered an order that the monthly court of Accomac should have power to decide finally all suits involving as much as twenty pounds sterling, or under that sum; see Robinson's Transcripts, p. 25. This power was granted to that court for the same reason as it had been granted to the monthly courts erected for the convenience of the remote settlements of Henrico and Charles City counties.

<sup>3</sup> Hening's *Statutes*, vol. i., p. 224.

the monthly court was to be conclusive.<sup>1</sup> The special instructions which Berkeley received in 1641-2 authorized him to establish county courts with the right of finally settling all cases not involving more than ten pounds sterling,<sup>2</sup> at this time equivalent to about sixteen hundred pounds of tobacco; and the figures representing this quantity of that commodity were introduced, along with its value in English coin, into all the new commissions of the county justices in order to define the extent of their power of final adjudication. These commissions also expressly stated that the county courts' criminal jurisdiction was to be restricted to such offences as the Governor and Council should think fit to allow them to hear and determine.<sup>3</sup> It was declared in a general way, about 1641-2, that the jurisdiction of this court in criminal matters was "to be careful for the conservation of the peace and quiet government of the people, and to execute whatever a justice of the peace, or two or more justices may execute, such offenses only excepted as concern the taking away of life and limb."<sup>4</sup>

<sup>1</sup> After the jurisdiction of the magistrate's court was limited at the maximum to twenty shillings, the right of final determination on the part of the monthly courts lay between twenty shillings and ten pounds sterling. That these courts could, as early as 1642, decide suits involving more than ten pounds sterling is shown by a case recorded in Accomac county (Orders Oct. 28, 1642) in which forty pounds were in dispute: an Act of Assembly dated 1661-62 expressly states that a county court could try any cause, no matter how large the amount involved; see Hening's *Statutes*, vol. ii., p. 65.

<sup>2</sup> Colonial Entry Book for 1641, p. 222. In 1657-8, the jurisdiction of the county court was made final in all suits involving as much as sixteen pounds sterling; Hening's *Statutes*, vol. i., p. 477.

<sup>3</sup> See commission of justices of Lower Norfolk county for 1641-2.

<sup>4</sup> Lower Norfolk County Records, Orders July 3, 1641, June 16, 1642.

A proclamation issued by Nicholson in 1691 contains a very complete statement of what was expected of the justices of the county-court, and indirectly reveals the extent of their jurisdiction. They were, first, to enforce the Acts passed for the "conservation of peace and preservation of good government," and to punish everyone guilty of violating them; secondly, to arrest all persons who threatened or actually assaulted the King's subjects; thirdly, to impanel juries, who were to inquire into all manner of felonies, witchcrafts, forestallings, extortions, and the like; fourthly, to examine witnesses, take depositions, and decide suits between party and party; fifthly, to carry out all orders of the General Court and proclamations of the Governor and Council, and to punish anyone who disregarded them; and, finally, to require their clerk to make a permanent record of all judgments in matters of controversy already determined.<sup>1</sup>

In a general way, it may be said that the county court's jurisdiction in its various aspects resembled the combined jurisdictions of the principal courts of England, namely, the Chancery, King's Bench, Common Pleas, Exchequer, Admiralty, and Ecclesiastical.<sup>2</sup> There are three or four phases of this jurisdiction which may be referred to with some particularity, because they are not only interesting in themselves, but also show how wide in its scope that jurisdiction really was. I have already touched at some length on the part taken by the justices in binding out destitute children as apprentices. The readiness of their response to every appeal made to them by the poor was one of the most remarkable and commendable of their many admirable

<sup>1</sup> Northampton County Records, vol. 1689-98, p. 99.

<sup>2</sup> *Present State of Virginia*, 1697-8, Section vii.

characteristics as a judicial body. Almost innumerable examples of this appear in the records, of which one or two typical instances may be given. In 1656, an impoverished woman residing in Lower Norfolk, long a sufferer from a diseased limb, prayed the county court to send a surgeon to examine her. One of the judges, after the petition was read, promised his associates that he would personally see that Dr. Cordon visited her; and when the physician's report was handed in, another of the judges undertook to draw up a contract with him for her necessary care and treatment. In the meanwhile, ample provision was made for her support.<sup>1</sup> In 1692, Jane Scott, of Elizabeth City county, with her child, having been driven out of doors by her husband, was left in a state of great destitution. She complained to the nearest justice of the wrong done her; and when her case was by him brought to the county court's attention, an order was promptly entered that Scott should pay her fifteen hundred pounds of tobacco at once; and that if he failed to do so, his whole estate was to be held liable for the default.<sup>2</sup> Whoever, in a spirit of compassion, afforded some one so situated a subsistence until he or she could obtain relief from the authorities, was assured of receiving, should he seek it, satisfaction from the county court for the expense thus entailed upon him.<sup>3</sup> The church-

<sup>1</sup> Lower Norfolk County Records, vol. 1651-56, p. 230.

<sup>2</sup> Elizabeth City County Records, Orders Sept. 18, 1692. There are numerous instances recorded of the care with which the county courts provided in the levies for destitute widows and children; see, for example, case in Lancaster County Records, vol. 1656-66, p. 60.

<sup>3</sup> See case of Nicholas Mason, of Lower Norfolk county, who had taken care of a "poor distressed wench" who died of a "soreleg"; Records, vol. 1651-66, p. 45; also p. 230.

warden neglecting to provide for such a person when ordered by that court to do so, was always compelled to answer summarily for his open or implied contempt.<sup>1</sup>

So ready were the justices to lend an attentive ear to the appeals of the poor and impotent that they were sometimes badly imposed on. In 1692, the county court of Westmoreland complained that their benignity had been greatly abused by petitioners whose claim to exemption from taxation on the score of extreme poverty or infirmity had been allowed without careful inquiry; thereafter, as a means of distinguishing those who were mere pretenders from those who were really in want, the person seeking relief was required to present a certificate from the vestry of the parish where he was domiciled stating that he was an object of charity, and that as such he had already obtained assistance from the churchwardens.<sup>2</sup> No one occupied such a mean and humble station in the community's social ranks that the court deemed him to be unworthy of its care, or, if necessary, of its active protection; in 1692, for instance, the justices of Westmoreland received the petition of a negro, who earnestly asserted that he had been freed by his deceased master, but notwithstanding was still detained in slavery by the heir. The judges, after a very "mature consideration" of all the circumstances surrounding this claim, decided in favor of its correctness.<sup>3</sup>

One of the most important sides of the county court's jurisdiction was the power it possessed over orphans' estates; and almost innumerable proofs exist that this

<sup>1</sup> See an instance in York County Records, vol. 1657-62, p. 455, Va. St. Libr.

<sup>2</sup> Westmoreland County Records, Orders May 25, 1692.

<sup>3</sup> *Ibid.*, Orders July 27, 1692.



power was exercised with extraordinary vigilance and with scrupulous care. There was a special term of the justices, known as the Orphans' Court, held for the exclusive purpose of passing upon the accounts of guardians, and correcting any form of neglect, error, or malfeasance which may have distinguished their management of their wards' affairs. All overseers and guardians of estates were, by an Act of Assembly passed as early as 1642, required to report at least once a year to the county court on the present condition of the property in their charge; and also as to what had been done in connection with it during the previous twelve months.<sup>1</sup> Ample notice was given from the bench by the justices of the date of the next meeting of the Orphans' Court, and the sheriff was also instructed to proclaim this date at different places in the county, so that all who had the supervision of orphans, whether of their persons or estates, should be without excuse for failing to be present with a full statement as to their manner of performing their trust since the court last convened.<sup>2</sup>

Of almost equal importance was the term of the county court known as the Court of Claims. This term, like that of the Orphans' Court, was always held on a date previously selected by the justices at a regular meeting. Every person who had reason to think that he had a good claim against the county was required to present it on this occasion,—such, for instance, as a claim to an allowance in the next levy for having taken up a fugitive servant or slave; or for having conveyed a packet in the King's service, or transported powder,

<sup>1</sup> MS. Laws of Va., 1642-3, Clerk's office, Portsmouth, Va.

<sup>2</sup> See for instances Lower Norfolk County Records, vol. 1656-1666, p. 383<sup>1</sup>; Elizabeth City County Records, vol. 1684-99, p. 43; Henrico County Records, vol. 1677-99, p. 37, Va. St. Libr.

on the Governor's warrant, to the place in the county to which it was assigned; and for many other acts of a similar character entitling the performer to remuneration.<sup>1</sup> One of the other functions exercised by the county court at this special term was to pass upon grievances; but to this more particular reference will be made under our political head.

The county court also sat as a Court of Probate. It was provided by an Act of Assembly, adopted in 1645, that letters of administration should be granted by this court<sup>2</sup>; and that it should also pass upon all appraisements, inventories, and accounts. This power, it would appear, had previously belonged to the General Court alone. During this time, the heirs of estates had made much complaint of the claims advanced by executors and overseers on the score of the expense entailed by their necessary attendance on that court at Jamestown, a place very remote from the homes of most of them.<sup>3</sup> It would seem to have been one of the Governor's functions to confer upon every administrator the power to perform the duties of the position<sup>4</sup>; whenever a man of property died intestate, his widow or his next of kin petitioned the county court to appoint an administrator of his estate, but such custodian when named was, before he could legally act, compelled to wait until his commission had

<sup>1</sup> Courts of Claims are referred to in Essex County Records, Orders Sept. 22, 1698; Henrico County Records, vol. 1677-99, p. 47. An instance showing the character of the claims will be found in York County Records, vol. 1690-94, p. 269, et seq., Va. St. Libr.

<sup>2</sup> Wills were proved in the county courts before this date. See will of Andrew Whewell in York Records proved May 2, 1637; also will of Adam Linsly proved June 2, 1637.

<sup>3</sup> Hening's *Statutes*, vol. i., p. 302.

<sup>4</sup> Lower Norfolk County Records, vol. 1646-51, p. 87.

reached him from Jamestown.<sup>1</sup> During the existence of the Commonwealth, such commissions apparently were issued directly by the county court.<sup>2</sup> Perhaps the county court's most original feature was that it was a court of record for all kinds of land conveyances. This was a radical innovation on the contemporary English custom; in England, all muniments of title were private documents carefully preserved in the iron-bound chests of their respective owners.<sup>3</sup> The recordation of conveyances in the modern way was unknown in the Mother Country. From a time going back to the remotest past, the title deeds of estates, whether the original or the duplicate, were hidden away in the secrecy and darkness of the muniment room, and there was no means by which the general public could find out the exact nature of their contents. The great inconveniences attending such a system,—not to speak of the opportunities for fraud which it created or encouraged,—must have impressed the minds of the Englishmen of that day, conservative and jealous of change as they were; therefore, when a colony was founded in Virginia, and there had to be invented some method of conveying lands suitable for a new country, where no title less shadowy than the aboriginal existed, it was natural that the English system, with its lack of formal recordation, should be discarded, and that a new system requiring such recordation should be adopted.

<sup>1</sup> Lower Norfolk County Records, vol. 1646-51, p. 96.

<sup>2</sup> *Ibid.*, vol. 1651-56, p. 66. The words used in this case were "upon petition of Mary Smith, widow, a probate of last will of William Smith &c. granted unto her, &c." It is possible, however, that Mrs. Smith had to obtain the Governor's commission before she could act.

<sup>3</sup> Scott has used this feature of the English legal system most effectively in some of the last scenes of *Old Mortality*.

It is probable that the recordation of land conveyances began at a date as early as 1619. An order of the General Court passed in 1626 directed that all deeds of gift, as well as all deeds transferring for a consideration the ownership of land, should be registered at Jamestown within the limit of a year and a day after they were drawn.<sup>1</sup> Finally, when the monthly county court began to meet regularly at one place, provision was made for the recordation of every deed of this kind at the county seat, as a means of affording the people at large the fullest information as to the basis of title to every plantation situated in their respective counties. By the terms of an Act passed in 1642, all mortgages of estates were to be taken as fraudulent unless registered in the books of either the General or County Court.<sup>2</sup>

<sup>1</sup> Robinson Transcripts, General Court Orders, 1626. The limit was finally fixed at three months; British Colonial Papers, vol. xvi., No. 78.

<sup>2</sup> MS. Laws of Va., 1642-3, Clerk's office, Portsmouth, Va. The probability is that it was early recognized that it would be safer as well as more convenient to record land conveyances at the county seats than at Jamestown. A single fire at the latter place would, in a few minutes, destroy the records of all the counties, and not merely of one county. The risks to which the records at Jamestown were subject are vividly shown in the following brief account of the fire occurring there during Andros's administration: "The 20th instant, a sudden fire broke out in a house joynd on the State house, which in a very short time wholly burnt it and the prison, but being in court time when a great many people were here, all the records and papers saved, which, being in confusion, I did by advice in council order their being sorted and listed, are found undamnified, and will soon be put in good order"; Gov. Andros to Board of Trade, Oct. 13, 1698, B. T. Va., Entry Book, vol. xxxvii., p. 312; see also Letter of Gov. Nicholson, July, 1699, B. T. Va., 1699, vol. vii.

## CHAPTER IX

### County Court : Forms of Trial

THERE were two ways of settling a suit, namely, by submitting the point at issue either to the verdict of a jury, or to the judgment of a court. The right of trial by jury was among the great fundamental rights guaranteed to the colonists as English subjects as well by the early charters as by the memorable ordinance brought over to Virginia in 1621 by Governor Wyatt. By the terms of that ordinance, the different courts were required to conform, not only to the English laws, but also to the English manner of trial, which was understood to apply especially to trial by jury.<sup>1</sup> The first conspicuous trial of this kind occurring after this ordinance was put in force was that of Dr. John Pott, who, in 1630, was convicted of cattle stealing, a verdict reflecting but little credit on the jurymen's fairness and discrimination, as it was subsequently proven to be grossly unjust.<sup>2</sup> There were previous to this, numerous trials by juries in criminal cases, as there were certainly numerous trials in civil cases. In the Declaration presented in 1642 to the

<sup>1</sup> Hening's *Statutes*, vol. i., pp. 110, 111. For reference to jury trial as granted by charter, see Part III., Chapter xvii., of the present work.

<sup>2</sup> Abstracts of Proceedings of Va. Co. of London, vol. i., p. 139. note.

English Government in opposition to the Company's re-establishment, it was stated that the people's happy condition at this time was shown by their possession of the right of trial by jury in criminal cases, and also in civil, should one of the parties demand it.<sup>1</sup> In the succeeding year, this right was confirmed by an Act of Assembly, which permitted the plaintiff or defendant in any suit to submit the merits of his cause to a jury's decision, should he prefer this to the decision of a court. At this time, however, it was necessary that he should offer a formal petition to the justices in order to secure the privilege; and this petition had to be filed in duplicate, not only with the clerk of the particular court, but also with the Secretary of State at Jamestown.<sup>2</sup>

By the terms of an Act passed in 1645, either party to a suit in a county court, no matter how large or how small the sum or values involved might be, possessed the right to call for the settlement of the controversy by the verdict of a jury. If before the cause came to an actual hearing, the defendant should demand relief in equity, the case was to be stayed until the issue of the appeal to the chancery division of the court was known; and should that issue be unfavorable to the defendant's side, the trial by jury was to be begun and pressed to a conclusion. If, on the other hand, the issue was favorable, the justices could enter a decree at once and dismiss the jury.<sup>3</sup> It would appear that,

<sup>1</sup> Declaration against the Company, 1642, Randolph MS., iii., p. 237.

<sup>2</sup> See Petition of John Gookin, Lower Norfolk County Records, Orders Dec. 15, 1642; MS. Laws of Va., 1642-3, Clerk's office, Portsmouth, Va.

<sup>3</sup> Henning's *Statutes*, vol. i., p. 303.

even after the jury had delivered their verdict, an appeal could be made to the chancery side of the court; in 1657, Thomas Godfrey, of Lower Norfolk, sought relief in this manner from one requiring him to make good "ye weight of four pieces of silver"; the court modified this verdict by ordering him to pay only seventy-two pounds of tobacco.<sup>1</sup> Not infrequently, when a verdict had been given by a jury, the plaintiff or defendant in the case would move for an injunction in chancery, which would be granted, should there seem to be just reason for it, provided that the party asking for the process offered proper security.<sup>2</sup>

The General Assembly in 1660-1, having first declared that the rule of granting a trial by jury only in case one of the parties to the suit requested it was contrary to English law, adopted a regulation that the sheriff of the county in which the General or county court happened to be sitting should, every morning the court was in session, empanel twelve men to be in attendance during the whole of that day in readiness to try all causes which the judges should think proper to refer to them for a decision.<sup>3</sup> It would appear that, after the passage of this Act, it rested in the judges' discretion, rather than in the parties' wishes, whether a case should be settled by the verdict of a jury or by judgment merely, although it is not probable that, when either a plaintiff or a defendant was anxious to submit the point in difference to a jury, this desire was disregarded, unless it was obvious that trial by the

<sup>1</sup> Lower Norfolk County Records, vol. 1656-66, p. 95.

<sup>2</sup> Essex County Records, Orders May 11, 1697. In this case a judgment had been entered, probably in accord with a jury's verdict.

<sup>3</sup> Hening's *Statutes*, vol. ii., p. 73.

court was, from every point of view, to be preferred.

It was provided in 1645 that the expense of having a jury for the settlement of a controversy should fall on the party to the suit who requested this mode of trial. It would seem that, at this time, the party asking was required to pay seventy-two pounds of tobacco to the members of that body to compensate them for the inconvenience of attending court, and also to reimburse them for the cost of their subsistence during their detention from their homes.<sup>1</sup> When both of the parties formally agreed to submit the points in dispute between them to a jury, it is probable that they shared the burden of charges thus created.<sup>2</sup> During every term of the county court, there were numerous instances of such submission. At the meeting of the justices of Lower Norfolk in April, 1664, five juries were called; and this was probably a smaller number than was usual.<sup>3</sup> Trial by jury seemed to be the common process, especially in all cases involving a question of defamation; and also in all cases of small misdemeanors.<sup>4</sup> In order to secure for the jury, men with a strong interest in the strict and proper administration of the law, it was required that no one should serve in this capacity unless he possessed an estate, whether in land or personality, of a considerable value, a provision which had its origin in instructions given to Andros by the English Government in the course of 1691-2.<sup>5</sup>

<sup>1</sup> Hening's *Statutes*, vol. i., p. 314.

<sup>2</sup> See written agreement between plaintiff and defendant in the case of Godby v. Foulkes, in Lower Norfolk County Records, vol. 1656-66, pp. 248-9.

<sup>3</sup> Lower Norfolk County Records, vol. 1656-66, p. 401.

<sup>4</sup> See, for an instance, Accomac County Records, vol. 1673-76, p. 373; also Lower Norfolk County Records, Orders July 15, 1686.

<sup>5</sup> B. T. Va., Entry Book, vol. xxxvi., p. 134.



The great majority of the cases coming before the county courts for settlement were decided by the justices without the intervention of juries. What were the qualifications of these men, from a legal point of view, for the responsible part which they had to perform in determining such a great variety of suits? Writing towards the close of the century, the authors of the *Present State of Virginia, 1697-8*, asserted that the membership of the county courts was composed of country gentlemen who had received no education in law. Formerly, so they declared, these courts were made up in larger proportion of persons who, having been born in England, had acquired there, before their emigration, a certain amount of legal knowledge; but these had, to a great extent, been succeeded by persons who, from their birth and residence in the Colony, had not enjoyed the same opportunities of obtaining such information.<sup>1</sup> Nevertheless, the surviving records show that, at every period during the Seventeenth century, the justices, whether natives of England or Virginia, had sufficient knowledge of law to conduct the business of their courts according to the recognized English precedents. In pursuing this course, they were not simply following a plan approved by long experience; a proclamation of the Governor and Council issued in 1686 enjoined them to shape all their proceedings "as reasonably near as our present condition will admit to ye practice of ye courts in England." As we have seen, there was both a common law and a chancery division to the county court's jurisdiction, and the different pleadings used in England in either branch were strictly adhered to in the Colony; on the

<sup>1</sup> *Present State of Va., 1697-8*, Section vii.

chancery side, for instance, there were the bill of complaint, the answer, and the decree; on the common law side, the declaration, the demurrer, the replication, and the like. From the foundation of the monthly court, it is probable that a cause came before the justices first by the ordinary petition<sup>1</sup>; and this had to be followed up by the usual pleas. In 1666, Raleigh Travers, of Northumberland, having brought an action against Samuel Wallis, and having defaulted in "the filing of his declaration," was promptly non-suited; and a similar fate befell an action entered against Mr. John Luke, of Northampton, by the churchwardens of Hungar's parish.<sup>2</sup> Very frequently, a demurrer would follow immediately after the petition or declaration; and, should it be overruled, the statements contained in the former were submitted to a jury.<sup>3</sup> No petition was allowed to be filed without the plaintiff having previously issued a summons informing the defendant of the fact that a suit was about to be begun against him.<sup>4</sup>

While adhering to the long established procedure borrowed from the English courts, the judges, nevertheless, showed, on numerous occasions, great impatience when counsel sought to use it to defeat or to defer justice. In an order adopted by the county court

<sup>1</sup> See Lower Norfolk County Records, Orders July 17, 1641.

<sup>2</sup> Northumberland County Records, Orders May 20, 1666; see also Northampton County Records, vol. 1679-83, p. 172.

<sup>3</sup> A case in which pleadings were drawn with great care and exactness will be found entered in Westmoreland County Records, vol. 1690-98, p. 188. How strictly all the regular procedure was observed in a criminal case will be seen by an examination of the record of the trial of Robert Hayes and Thomas Cooke in Northampton County Records, vol. 1657-64, folio p. 205.

<sup>4</sup> Lower Norfolk County Records, Orders Aug. 15, 1645.

of Westmoreland, in 1690, it was stated that suitors were often exposed to an extraordinary charge by the dilatory pleas of attorneys, because these pleas made it necessary to detain witnesses for a great length of time at much expense, or even compelled them to return during several successive terms without being called upon to deliver their testimony. One of the claims put forward in this county was that no witness ought to be sworn, or deposition taken, unless plaintiff and defendant were both present, and consented to its being done. With a view to preventing the delay which such a plea would have caused if allowed, the judges ruled that every witness should be permitted to make oath to his deposition at the very first term he was summoned; and that this deposition should be accepted "as good and authentic proof" whenever the case came on for trial.<sup>1</sup> This is one of the numerous indications that the members of the county courts strove to arrive at the merits of a suit at the earliest moment consistent with a careful weighing of all the evidence that might be offered. The description which Beverley gave of the spirit of the General Court judges in determining all cases brought before them was, no doubt, also precisely true of the spirit of the county court justices: the former, he stated, never admitted "unnecessary impertinences of form and nicety"; and as they came to a decision directly the cause in their opinion had been sufficiently debated, they were able by this means to avoid all the "trickery and foppery of the law."

But the justices did not rely entirely on their sense of natural equity to guide them in reaching a right conclusion in settling the various controversies brought

<sup>1</sup> Westmoreland County Records, Orders Feby. 26, 1690.

to their attention in the court-room; an Act of Assembly, passed in 1666, provided that every county court should possess copies, not only of all the English statutes, but also of such approved legal works as Dalton's *Justice of the Peace* and *Office of Sheriff*, Swinburne's *Book of Wills and Testaments* and the like. These volumes were only to be obtained in England, and they were paid for by a special allowance in the county levy.<sup>1</sup> In 1669, Captain James, of the *Duke of York*, was asked by the justices of Lancaster to purchase certain law books for that county's use, and a sum was raised by the levy of 1671 sufficient to reimburse him.<sup>2</sup> In the course of the same year, a similar request was made of Major Adam Thoroughgood (then on the point of sailing for England) by the justices of Lower Norfolk; and in the letter they addressed to him, they stated that they were acting in obedience to the General Assembly's injunction.<sup>3</sup> In York, a like commission was entrusted to Colonel John Page, a member of the county court.<sup>4</sup> At a later date, the court of this county complained that these books, which, by that time, had been bought, were dispersed in so many hands that they were practically of no benefit to the justices themselves; and the clerk was instructed to have them once more returned to the shelves of the court-room.<sup>5</sup> Nicholas Spencer, about 1690, secured in England, for the use of the Westmoreland county court, perhaps the

<sup>1</sup> Acts of 1666, Colonial Entry Book, vol. lxxxix., p. 82.

<sup>2</sup> Lancaster County Records, Orders Nov. 26, 1669.

<sup>3</sup> Lower Norfolk County Records, vol. 1666-75, p. 95.

<sup>4</sup> York County Records, vol. 1664-72, p. 516, Va. St. Libr.

<sup>5</sup> York County Records, vol. 1675-84, orig. p. 331. In 1690, a prisoner was bailed in Lower Norfolk county because there was no copy of the statutes at large at hand for the court to consult; see orders Aug. 15, 1690.

most complete set of law books owned by any court of this grade sitting in the Colony; it contained, not only the works which the Act of 1666 required every bench of judges to obtain, but also numerous other volumes equally indispensable in administering judicial business. The value of this little library was estimated at eight pounds sterling, or four thousand pounds of tobacco; which would mean that, in our modern figures, it was worth about two hundred dollars. The volumes, however, included several blank ones for the entry of records.<sup>1</sup> It is probable that the collection of law books belonging to each of the county courts steadily grew larger as the years passed on, for, apart from the additions made by actual purchase, the justices must have taken pride in increasing the size of their court libraries by personal gifts.

Besides the ordinary law books, there were kept in the court-room, for consultation at any moment, copies of the Acts of Assembly. These Acts were, as a rule, supplied by the clerk of that body, who was compensated by an allowance in the county levy.<sup>2</sup> Not infrequently, during the early history of the Colony, the court sent some one to Jamestown to make a copy of the statutes desired; for instance, in 1645, Richard

<sup>1</sup> Westmoreland County Records, Orders Jany. 28, 1690. We find the following in the Essex Records: "To Fra. Meriwether in part of pay for a law book and writing the lawes therein, 777 lbs. of tobacco; to same for ye remaining part, 894 lbs."; see Orders Nov. 9, 1694.

<sup>2</sup> The following from the Essex County Records is one item among many of the same character scattered through the county records: "To Capt. Peter Beverley for ye copy of ye laws 350 lbs. of tobacco"; see orders Nov. 9, 1694. In the Lower Norfolk County Records, we find the following: "To Mr. Randolph, clerk of ye Assembly, for ye Acts of ye Assembly 800 lbs."; vol. 1656-66, p. 269.

Conquest, of Lower Norfolk, received for services of this kind one thousand pounds of tobacco; and, in 1672, William Porter, of the same county, was also rewarded for work of the like character.<sup>1</sup> It seems to have been the general rule that all the Acts of the last General Assembly should be read at the following term of every county court convening in the Colony.<sup>2</sup>

The law books and Acts of Assembly belonging to the respective county courts did not form the only collections of this character which the justices had access to in shaping their decisions; a very large proportion of the class of men from whom the members of the county courts were drawn, possessed, as we have already seen, very considerable libraries of their own, and an important section of these libraries related to the department of law. This section was almost certain to be steadily increased should the owner happen to be a justice of a county court, as he had such frequent occasion to consult legal works in order to perform the more satisfactorily to himself and the public the duties of that office. There were few prominent citizens of the Colony known to have served many years on the county bench whose collections did not include law books. Some instances in confirmation of this statement may be given. Among the volumes belonging to Colonel John Mottrom, of Northumberland, were a *Treatise on Wills*, *The Sergeant at Law*, and the *Statutes of Elizabeth*.<sup>3</sup> Colonel Southey Littleton, of Accomac, owned *Ye Body of ye Common Law* and the *Printed*

<sup>1</sup> Lower Norfolk County Records, Orders Nov. 3, 1645; also vol. 1666-75, p. 86.

<sup>2</sup> See Henrico County Records, Orders Aug. 1, 1699.

<sup>3</sup> Northumberland County Records, Orders July 4, 1655.

*Lawes of Virginia*.<sup>1</sup> Henry Willoughby's library contained two books relating to law printed in folio, four in quarto, nine in octavo, and twenty-three in duodecimo.<sup>2</sup> Among the contents of John Sampson's store, situated in Rappahannock, were "ninety-one law books of this country."<sup>3</sup> These volumes were easily purchasable by the justices, whose need of them had probably been Sampson's inducement to keep them in stock. When Captain Francis Mathews, of York, died, he had in his possession a copy of the *Lex Mercatoria*, which he had borrowed from Isaac Clopton; his administrator was ordered by the court to return the book, and Clopton was directed to deliver up all volumes to be found in his house belonging to Mathews's estate.<sup>4</sup> One of the works composing the Farrar collection in 1683, was *West's Precedents*.<sup>5</sup> Among the law books left by Thomas Cocke, of Princess Anne county, at his death in 1697, was the *Jure Maritimo*, the *Complete Justice* and the *Laws of Virginia*.<sup>6</sup> In 1690, John Carter, of Lancaster, bequeathed to Robert Carter his collection of works on law.<sup>7</sup> Of the three hundred and ninety titles forming the library of Ralph Wormeley, thirty-three related to law and political science,—among them, six sets of the Acts of Virginia, and several editions of the statutes-at-large.<sup>8</sup>

<sup>1</sup> Accomac County Records, vol. 1676-90, p. 295.

<sup>2</sup> Rappahannock County Records, vol. 1677-82, orig. p. 75. Willoughby was a physician, but his library was accessible to every justice among his friends and patients.

<sup>3</sup> Rappahannock County Records, vol. 1677-82, orig. p. 62.

<sup>4</sup> York County Records, vol. 1671-94, p. 161, Va. St. Libr.

<sup>5</sup> Henrico County Records, vol. 1677-92, orig. p. 268.

<sup>6</sup> Princess Anne County Deed Book, 1691-1708, p. 162.

<sup>7</sup> Lancaster County Records, vol. 1690-1709, p. 4.

<sup>8</sup> *William and Mary College Quart.*, vol. ii., p. 170.

## CHAPTER X

### County Court: The Legal Profession

**P**ERHAPS from the very foundation of the monthly court, the justices enjoyed the advice of attorneys more or less learned in the science of law. In the beginning, the clerks of this court appear to have acted in this capacity, perhaps because their office made them especially familiar, not only with legal procedure, but also with legal principles.<sup>1</sup> It was not long, however, before it was thought unbecoming that the same man should serve as a clerk and practise as an attorney at the same time; and this probably led to some restriction upon these officers' right to represent the interests of clients in the court-room. In 1642, when, as we have seen, Governor Berkeley was instructed to choose county seats and issue commissions to county justices, the attorneys residing in the Colony were accused of exacting exorbitant fees. In order to reduce the number of lawyers, an Act of Assembly was passed that year prohibiting anyone from following the legal profession unless he had first obtained a license from the General as well as from the County Court. A regular schedule of fees was now prescribed:—for drawing up a petition, declaration, and answer, the charge was not to exceed twenty pounds of tobacco; and that

<sup>1</sup> Robinson Transcripts, pp. 28, 29.



amount also was apparently to be the limit of the attorney's remuneration for arguing a case in court; and should he demand of his client a higher fee in either instance, he was liable to a fine of five hundred pounds of the same commodity. No attorney, according to this Act's provisions, was to be at liberty to refuse his services to anyone seeking to employ him, unless he had already been engaged on the other side; and should he do so, he exposed himself to a penalty of two hundred and fifty pounds of tobacco. It was, however, expressly declared in the Act that these requirements were not intended to apply to persons who had been made special attorneys in the Colony, or could show letters of procuration granted to them in England.<sup>1</sup>

This statute, which seems to have been reasonable and carefully considered in its different provisions, was repealed at the session of the General Assembly held in March, 1645-6, by which time the attorneys practising at the bar of the Colony had fallen under a cloud of public odium. Various charges were now hotly urged against them:—it was said that they were constantly stirring up troublesome and unnecessary suits; that they were ignorant, unskilful, and covetous; and that they looked rather to their own profits than to the interests of their clients. It was now determined by the General Assembly that only persons coming forward voluntarily, without expectation of a fee, should be allowed to appear before the bench in the character of attorneys.<sup>2</sup> As it was indispensable, however, that whoever offered his services even gratuitously should have some knowledge of law, it was deemed advisable to empower every justice of the peace, sheriff, or other

<sup>1</sup> Henning's *Statutes*, vol. i., p. 275.

<sup>2</sup> *Ibid.*, vol. i., p. 302.

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subordinate officer to take charge of the interests of suitors in their respective courts as a part of their regular duties.<sup>1</sup> The antipathy to the practising attorney was still alive in 1647, for, in the course of that year, it was again declared that no one should receive remuneration directly, or indirectly, for representing a client before judges or jury; and it was further provided that, if, on any occasion, a plaintiff or defendant should be in danger of losing his cause, simply through ignorance and inexperience, then the justices were to choose from among the people some man fully competent by knowledge and talents to advocate that cause with the necessary skill and force. No other kind of attorney was to be permitted to share in the business of the court.<sup>2</sup>

The professional attorney not being suffered now to practise, the ordinary law business outside of the courts fell, to a large degree, into the hands of the clerks, who were rendered capable of attending to it by the legal information they had acquired in the performance of the duties of their office. It would appear, from allowances made in the inventories, that, about the middle of the century, numerous wills were drafted by this body of men, to whom it was only natural that persons wishing to have their last testaments drawn up should apply. Among the items included in the list of debts of the estate of William Vincent, of Lower Norfolk, was one which represented a sum due William Turner, clerk of the county court, for having written the will of the deceased<sup>3</sup>; the fee, in this case, amounted to three hundred pounds of tobacco; and such was probably the

<sup>1</sup> Hening's *Statutes*, vol. i., p. 330.

<sup>2</sup> *Ibid.*, p. 349.

<sup>3</sup> Lower Norfolk County Records, vol. 1651-56, p. 131.

regular charge on these officials' part for such a service. The rule had now been adopted that no sheriff, under sheriff, or clerk should be permitted to plead as an attorney in a court of law.<sup>1</sup>

During the interval between 1647 and 1658, professional attorneys must have again been allowed to practise, for, in the latter year, we again find them denounced, in a formal Act of the General Assembly, for using the influence they derived from their privilege of pleading in the courts, to stir up suits, to the "great prejudice of the people." It was now, for the second time, proclaimed that no one residing within the Colony's boundaries, either the lawyer by profession, or the ordinary citizen, should be permitted to plead in any tribunal, or give counsel in any case, in consideration of a fee, whether it took a direct or an indirect form; and a violation of this regulation was to be punished by a fine of five thousand pounds of tobacco.<sup>2</sup> Again, at the session of the Assembly held in March, 1660-1, it was declared that no justice, sheriff, under-sheriff, or clerk should appear as an attorney in the court with which he was connected; but an exception was made in the case of a justice, should some poor person request the commission to assign one of their number to advocate his cause before them. No remuneration, however, was to be allowed for the service.<sup>3</sup>

<sup>1</sup> Hening's *Statutes*, vol. i., p. 532.

<sup>2</sup> *Ibid.*, vol. i., p. 482.

<sup>3</sup> *Ibid.*, vol. ii., p. 81. "Thomas Brunt, a poore man of this county, by his petition, exhibited to ye court, hath complained that he is wrongfully accused at ye suit of Capt. Thomas Jury, and that ye said Capt. Jury hath feed all ye attorneys belonging to this court, hereby prays that, according to Act of Assembly, he might have one of the justices of the court assigned him to plead his cause, and having made choice of Capt. William

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The passage of laws excluding regular attorneys from the courts is an indication, not so much of a lack of practical sagacity on the part of the justices, at whose instigation, or at least with whose consent, such laws were probably adopted, as of the general inferiority, certainly in learning, of the members of the bar during the earlier decades of the century. To shut out professional attorneys, and to suffer other persons, without even a pretension to special knowledge, to practise, would have been to invite the same evil in a much worse form; so, in order to strike at the root of the whole trouble, a serious effort was made to carry on the business of the courts without any assistance from the outside. The Governor and Council—the ablest and best informed body of men in the Colony—seem to have recognized that such a course was not only impracticable in the long run, but also an encroachment on the fundamental rights of suitors.<sup>1</sup> At the end of a few years, professional attorneys resumed their former position in court, and thereafter found no difficulty in retaining it, as the volume of business, owing to the Colony's growth in wealth and population, rapidly became so great that, even in the opinion of the justices themselves, only trained lawyers could properly attend to it.

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Robinson, the court requests Robinson to perform ye same"; Lower Norfolk County Records, Orders Oct. 18, 1681. A similar instance occurred in Accomac county in 1680; see Records, vol. 1678-82, p. 213. By this time, attorneys were again allowed to practise, but justices were still assigned as counsel at special request.

<sup>1</sup> See Campbell's *History of Virginia*, p. 237, where it is stated that the Governor and Council, when the Act came up from the House of Burgesses, said: "We consent to this Act as far as shall be agreeable to Magna Carta." The Burgesses replied: "We cannot see any such prohibition in Magna Carta."

The fee which an attorney was permitted to charge for representing a client in court was, in 1642, as we have seen, about twenty pounds of tobacco. Thirty-four years later, when the price of that commodity had fallen to a much lower figure, a lawyer was allowed to demand a larger amount for a similar service. The value of his fee was also greatly advanced; indeed, he seems to have been left practically at liberty to exact whatever sum he was able to obtain; and this had become such a public burden by 1677, that, in the Grievances of the counties presented to the English Commissioners who were seeking, at that time, to soothe the unhappy Colony, it was specially requested by at least one set of petitioners, namely, those of York, that the fee for representing a client in court should not be allowed to exceed fifty pounds of tobacco.<sup>1</sup> This appears small when it is remembered that the remuneration for drafting a will was now four hundred pounds of tobacco as compared with three hundred charged in 1654, as already mentioned.<sup>2</sup> About 1680, it was declared that the maximum sum to be paid for legal services performed in the county court should not exceed one hundred and fifty pounds of that commodity; and should any lawyer refuse to advocate a client's cause for this amount as being too little, he was to be subjected to a fine equal to that figure.<sup>3</sup> Writing in 1681, Fitzhugh stated that, in a case in which he was

<sup>1</sup> Grievances of York County, 1676-7, Winder Papers, vol. ii., p. 87.

<sup>2</sup> William Feiger, of Westmoreland county, in 1677, directed his executors to pay William Horton 400 lbs. of tobacco for drafting his will; see orders Nov. 21, 1677. In 1692, Francis Page paid William Sherwood £5 for writing a similar document; see York County Records, vol. 1690-94, p. 171.

<sup>3</sup> Henning's *Statutes*, vol. ii., p. 478.

interested, the opposing counsel had, by way of professional remuneration, received as much as fifty pounds sterling.<sup>1</sup> Fitzhugh himself seems to have charged only seven pounds sterling for the services performed by him for Mr. John Burrage in the General and county courts. This fee, he declared in a letter to his client, was a small one: "I can assure you my county court fees are barely according to Act of Assembly; at one hundred and fifty pounds of tobacco per cause, they come to eight thousand pounds, which I may demand, and the law will give me, yet in respect your employ was something considerable, and I am something straightened for money, I have made this small and modest demand in full of my whole due."<sup>2</sup>

It would appear that the profession of law was not unprofitable at this time to men, like Fitzhugh, who enjoyed the highest standing at the bar; and it was rendered the more lucrative by the General Assembly's determination to exclude from practice all who could not show a license signed by the Governor. That body was, in 1680, led to pass an Act to this effect by the fact that so many ignorant men, pretending by "impertinent discourses" to make a friend's case clear to the judges, only succeeded in bringing destruction on this person's cause, and impeding the course of business in the court.<sup>3</sup> Three years later, this Act was repealed;

<sup>1</sup> Letters of William Fitzhugh, May 21, 1681.

<sup>2</sup> *Ibid* June 5, 1682.

<sup>3</sup> Henning's *Statutes*, vol. ii., p. 478. The following is a copy of a license issued in 1685 in Surry county (see vol. 1684-86, pp. 53, 54): "By his Excellency

"Whereas by an Act of Assembly, it is provided that noe person shall be admitted to practise as an attorney in the General Court, or any county court in this colony, under ye penalties by ye law established untill they are by the Governor lycensed, authorized,

but in the following year, Howard, who was anxious to increase his income by adding to it the license fees of attorneys, revived the measure by simply issuing his proclamation. The Assembly protested against this step as without any warrant in law, and dangerous in its possible consequences; the question raised was, by the Committee of Plantations, submitted to the English Attorney-General and Solicitor-General, who expressed the opinion that the King enjoyed the right to revive the Act requiring licenses to be obtained, but that to do so would be inconvenient and prejudicial to the Colony's welfare. The Act was finally repealed by the proclamation of Lieutenant-Governor Nicholson.<sup>1</sup> After this, a suitor in any case could employ whomever he chose to represent his interests in court.

At the end of the century, there were no licensed practitioners<sup>2</sup>; nevertheless, Law had, by this time, become in Virginia as distinct a profession as Medicine, and the men specially trained for it, by their practice through a long series of years, now formed a separate body remarkable for a high degree of respectability from the point of view of talents, integrity, and even learning.<sup>3</sup> The day had long gone by when the General

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impowered and duly qualified thereunto, know yee, therefore, that I, Fra. Howard, Baron of Effingham, his Majtie's Lieut. and Governor Generall of Virginia, being well assured of the Ability and Integrity of John Everett, of Charles City County, doe lycense him, the sd John Everett, to practise as an attorney until the 20th day of Aprill next, which shall be in the yeare of our Lord 1686, after which time the power and virtue of the lycense of attorney to cease and become void; given under my hand and the seale of the colony this 31st day of July anno dom. 1685."

<sup>1</sup> B. T. Va., vol. viii., Doct. 22.

<sup>2</sup> Beverley's *History of Virginia*, p. 208.

<sup>3</sup> Henry Perrott, of Rappahannock county, was not the only lawyer in the Colony of his day who had been trained in the Eng-

Assembly was likely at any session to pass acts practically destroying Law as a professional pursuit; the tendency now was to encourage the enlargement of the circle of competent men who devoted the chief part of their time, as paid attorneys and solicitors, to looking after the legal affairs of their different communities. As early as 1681, it was proposed that a Law Society should be established at Jamestown. "I desire you," Fitzhugh wrote, that year, to Henry Hartwell, one of the most distinguished members of the Colony's bar, "to mind Mr. Clayton to provide institutes for our intended Society, and to take care that none be admitted therein but loyalists."<sup>1</sup>

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lish Inns-of-Court. For Perrott, see *William and Mary College Quart.*, vol. iv., p. 135.

<sup>1</sup> Letters of William Fitzhugh, June 19, 1681.



## CHAPTER XI

### County Court : Leading Attorneys

**I**T will be of interest to inquire as to who were the principal lawyers associated with the several counties during the Seventeenth century. First, as to those who filled the office of the King's attorney for special divisions of the Colony. One of the earliest of this rank was George Rutland, appointed, in 1643, to prosecute a large number of the citizens of Gloucester, Middlesex, Warwick, Elizabeth City, Isle of Wight, Upper and Lower Norfolk, because they had been guilty of serious breaches of various Acts of Assembly. He was authorized to examine witnesses, to take depositions, and, with the local commissioners' aid, to do whatever else lay in his power to bring culprits to justice.<sup>1</sup> In 1665, John Fawcett was chosen to be the King's attorney for Accomac by the judges of that county.<sup>2</sup> Ordinarily, however, such a nomination seems to have been made directly by the Attorney-General of the Colony; for instance, in 1687, Charles Holden was, by that official, selected to press, in the King's name, all the indictments and informations presented in the courts of Accomac and Northampton; and he was also to render an account of certain penalties

<sup>1</sup> Lower Norfolk Records, Orders July 17, 1643.

<sup>2</sup> Accomac County Records, Orders Aug. 15, 1665.

imposed by these courts, the proceeds of which were intended to go to the King's representative at Jamestown. A similar prosecutor was named for every county by the Attorney-General acting under instructions from the General Court. The main purpose of these appointments seems to have been the same in each instance, namely, to swell the income of the greedy and grasping Howard by enforcing a stricter collection of fines and forfeitures.<sup>1</sup> Nevertheless, these attorneys performed an important work for the welfare of the whole community by appearing in all cases in which the public had been wronged; for example, Holden, in one case, is found prosecuting Charles Kitchen because he had failed to report for taxation one of the persons belonging to his family who was a tithable; in another, the grand jury of Accomac because they had defaulted in making the presentations required by law; and in a third, a man who had committed an assault on the highway.<sup>2</sup>

There appears to have been at one time a serious proposition to send to Virginia from England a band of trained lawyers to serve as prosecuting attorneys for the whole Colony; but as the condition of their coming was that the General Assembly should provide for each a competent salary, which would have imposed a heavy additional burden on the taxpayers, the English Government's suggestion received no encouragement.<sup>3</sup>

One of the most distinguished lawyers residing in Vir-

<sup>1</sup> Rutland was also appointed by the Attorney-General. Holden's commission will be found in Accomac County Records for 1687.

<sup>2</sup> Accomac County Records, vol. 1682-97, folio p. 116; see also Records for 1687. Holden was always designated in the Records as "His Majesty's Attorney-General's Deputy."

<sup>3</sup> Instructions to Berkeley, 1662, Randolph MS., vol. iii., p. 280.

ginia in the Seventeenth century was William Sherwood, who long enjoyed probably the most lucrative practice ever secured by a member of that bar during the whole of this period. He was a native of England, and before emigrating to the Colony seems to have been guilty of some form of malfeasance, from the legal consequences of which he was only saved by the intervention of Williamson, at that time one of the principal English Secretaries-of-State. Writing to his benefactor in 1672, Sherwood expressed his grateful acknowledgment of this extraordinary service: "God will reward you," he exclaimed, "*Beati qui sunt misericordes quoniam ipsis misericordia.*"<sup>1</sup> The cloud over his early reputation was known in the Colony, and sometimes exposed him to attack. In a petition which he presented to York court in 1680, he defended himself with much feeling from a loose and groundless charge of knavery brought against him in his absence by Charles Hansford in the midst of a promiscuous company drinking in a tavern; in this fine paper, he declared that he had been educated as an attorney, and that for ten years he had supported himself and his family by the pursuit of his profession; and he closed by saying that it was within the knowledge of "many persons of honor, credit, and repute" that he had discharged with fidelity every trust committed to his care.<sup>2</sup> Whatever may have been the guilt of his early manhood (which seems to have been confined to a single act), he atoned for it by an after-career in Virginia, distinguished for the highest diligence, prudence, and integrity. No one was more capable of estimating his qualifications as a

<sup>1</sup> Letter to Williamson dated April 10, 1672, Colonial Papers, vol. xxviii., No. 40.

<sup>2</sup> York County Records, vol. 1675-84, orig. p. 285.

lawyer than William Fitzhugh: "I could have enlarged more on this point," wrote the latter to him in 1679, "but relating this further to you would be carrying coals to Newcastle."<sup>1</sup>

Sherwood, for some years at least, appears to have had his home in Surry county. Here, in 1673, he is found serving in the office of under sheriff.<sup>2</sup> His legal business had already become lucrative; in one year alone, three letters from persons residing at a distance, who wished to employ him, were entered in the county's records; and the like calls must have formed only a small fraction of a practice based chiefly upon retainers by clients who were able to be present with him in court.<sup>3</sup> At a later date, he seems to have established his home in Jamestown. After the suppression of the insurrection of 1676, he represented in a suit Mrs. Drummond, whose husband had been hanged and his estate appropriated by Berkeley. At the hearing of this case, there was read a letter from the English authorities, not only ordering the property's restoration to the widow, but also reflecting with severity on the conduct of that Governor, now deceased. This raised a great commotion among the four Councillors forming the General Court during this term. When Colonel Bridger sternly asked as to who was Mrs. Drummond's attorney, Sherwood, becoming suddenly reluctant to speak up, whispered Colonel Swann to take his place, which Swann immediately consented to do, and at once the judges, consisting of Nathaniel Bacon, Sr.,

<sup>1</sup> Letters of William Fitzhugh, June 10, 1679. Sherwood's letters show that he had enjoyed a thorough education; see an example in Rappahannock County Records, vol. 1695-99, orig. p. 100.

<sup>2</sup> Surry County Records, vol. 1671-84, p. 39, Va. St. Libr.

<sup>3</sup> *Ibid.*, vol. 1671-84, p. 23, Va. St. Libr.

Nicholas Spencer, Joseph Bridger, and William Cole, began to bandy heated words with him; and they grew more angry than ever when Swann boldly declared that Mrs. Drummond's letter to the King—the cause of the communication so bitterly resented by the judges—had been drawn by the English Commissioners after they had inquired into the unfortunate conditions leading up to the rebellion. Sherwood's action in keeping in the background in this case would seem to show that he was anxious not to arouse any prejudice against himself in the minds of a court before whom he practised so habitually. Probably, too, he had not anticipated that they would feel so strongly, and Bridger's demand was, no doubt, the first intimation of his error. This scene proves that the unhappy episode in his early life had made him prudent and politic to the point of timidity.

Sherwood, in 1679, represented a well known client in York county<sup>1</sup>; and a few years afterwards, appeared in the General Court as the plaintiff in a suit brought against St. Leger Codd, of Lancaster, to recover forty-one pounds sterling, due quite probably for professional services before the justices of that county, as the case had been carried up on appeal.<sup>2</sup> During the latter part of his career as a lawyer, his practice seems to have been largely confined to the General Court, of the business of which he enjoyed perhaps the most lucrative share. He was frequently employed before this tribunal in behalf of persons compelled by their engagements to return to England, but who, during their absence, seem to have entrusted their suits to him,

<sup>1</sup> York County Records, vol. 1675-84, orig. pp. 170, 171.

<sup>2</sup> Lancaster County Records, Orders Aug. 10, 1687.

with unreserved confidence.<sup>1</sup> His high reputation for ability and learning was also shown by the number of times he was summoned to argue important and difficult cases in which a whole county, or its representatives, were interested; for instance, in 1693, he was engaged to defend the justices of Elizabeth City, who had been indicted by that county's grand jury for the offence of neglecting the business of their court.<sup>2</sup>

Sherwood appears to have been one of the few attorneys residing in the Colony who devoted his talents and energies exclusively to the pursuit of law; the majority of the members of the bar combined that calling with the tobacco planter's and, in addition, sometimes with the surveyor's. Jacob Johnson, an advocate of Princess Anne county, employed a part of his time in following the business of a brick-burner, brick-layer, and house plasterer.<sup>3</sup>

As York was, from an early date, a populous and wealthy community, the circle of its attorneys was perhaps larger and more distinguished than was often observed elsewhere; among the most conspicuous practising at the same period, or at different periods, before its court were John Holcroft, Thomas Ballard, James Bray, John Page, and Daniel Parke. In 1680, Robert Smith enjoyed a lucrative business in this county; ten years afterwards, Edward Chilton and Hugh Owen were the foremost lawyers; and at the close of the century, William Hockaday, Francis

<sup>1</sup> See, for an instance, the case of Stephen Howard in 1696, referred to in Elizabeth City County Records, vol. 1684-99, p. 401, Va. St. Libr.; see also York County Records for 1679, orig. p. 171.

<sup>2</sup> Elizabeth City County Records, Orders Dec. 5, 1693.

<sup>3</sup> See statement of Edward Wilson James in *Va. Maga. of Hist. and Biog.*, vol. vii., p. 361.

Willis, and Thomas Bushrod.<sup>1</sup> The greater number of these men appeared also at the bars of other counties; several of them indeed were not citizens of York; for instance, Chilton and Owen were equally prominent in the Henrico court, and Chilton especially seems to have enjoyed a large practice there. In a suit between Allanson Clerk and Peter Rowlett, in this court, in 1690, involving a disputed wager, he won his case by a considerable display of learning.<sup>2</sup> Bartholomew Fowler, who, like Chilton, at one time filled the responsible office of Attorney-General for the Colony, was also a member of the Henrico bar; to which also belonged James Cocke, Benjamin Harrison, and William Glover.<sup>3</sup> John Everett too was a prominent member.<sup>4</sup>

One of the earliest attorneys to practise his profession in Northampton county was William Michael, who was a leading member of that bar about 1657; and five years later, Col. Edmund Scarborough enjoyed there equal distinction as a lawyer. An argument by him, delivered in the case of John Gethering (who having married Elizabeth Charlton when she was yet under twelve years of age, had entered a claim to her property at her death a short time afterwards) has survived in the county records; in the course of this argument, Scarborough described what the attorney of those times must trust to, apart from facts, in urging his case on the judges' attention; first, he must bring for-

<sup>1</sup> York County Records, vol. 1684-87, p. 13; vol. 1687-91, p. 527, Va. St. Libr.; also *William and Mary College Quart.*, vol. viii., p. 228.

<sup>2</sup> Henrico County Minute Book, 1682-1701, p. 279, Va. St. Libr.

<sup>3</sup> Fowler seems to have come out to Virginia at William Randolph's expense, for he is included as a headright, in one of the patents issued to Randolph; see Henrico County Records, Orders Aug. 1, 1695; also Minute Book, 1682-1701, p. 243, Va. St. Libr.

<sup>4</sup> Henrico County Minute Book, 1682-1701, p. 199, Va. St. Libr.

ward statutes and precedents in law and equity; secondly, if none of these could be considered applicable, he must draw as powerful inferences as were possible from analogy; and thirdly, must indulge in as brilliant a display of wit as he was capable of. In closing, Scarborough begged the court, when deciding the suit before them, "to improve [*i. e.*, prove or rely on] reason, the basis of all law," by which seal, the case, in his opinion, should be really "measured."<sup>1</sup>

Thomas Harmanson was a leading attorney of Northampton about the same time; and in the short interval between 1670 and 1674, the names of Francis Pigott, Daniel Foxcroft, John Tankard, Charles Holden, and William Spencer appear with great frequency in the same character.<sup>2</sup> John Luke was a lawyer of prominence residing in this county about 1680; among the few facts relating to him which have been preserved, was that he owned two silk gowns, and that he kept them with great care in a separate box; it is probable that these gowns had been worn by one of his ancestors in the English courts, for there is no evidence that, in Virginia, a special costume was adopted by the members of the bar when arguing their cases before the bench. Luke, however, seems to have been in the habit of using a lawyer's bag, no doubt, resembling those customary with the English barristers in carrying their legal papers.<sup>3</sup> In 1680, Mr. John Custis, Jr., laid an

<sup>1</sup> Northampton County Records, vol. 1657-64, folio p. 157.

<sup>2</sup> "Charles Holden, pray arrest, sue, and implead Daniel Foxcroft of Northton. County in Virginia in an accon. of ye case for words att my suite, and for yor. soe doing this shall bee ye warrant, and I will give you fee to consent, As witness my hand this 23rd of December, 1672."

"JOHN GWYN."

See Northampton County Records, vol. 1664-74, p. 167.

<sup>3</sup> Northampton County Records, vol. 1679-83, p. 132. "Saturn's



information against Tankard in the court of Northampton because he had acted as counsel in at least eight cases, although he had not, as required by law, obtained a commission from the Governor to practise. Custis endeavored to induce the justices to subject him to a fine of forty-eight hundred pounds of tobacco at the rate of six hundred pounds for each case in which he had appeared without license as prescribed by the Assembly; but the court declined to listen to this urging, on the ground that Tankard was fully qualified to practise, although his commission was "not extant in Northampton county." He was ordered to bring forward at the next term proof that his name was entered on the rolls at Jamestown, a fact that would entitle him to admission as an attorney to any court of the Colony.<sup>1</sup>

Tankard must have been irascible and even rude, for, in 1669, the justices of Accomac county, on his asking permission to practise in their court, declined to consent until he had promised "to demean himself civilly" towards the bench; and they warned him that, should he forget to bear himself becomingly, his name would be stricken from the list of persons enjoying the right to appear before them.<sup>2</sup> Charles Holden was

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Day, the 19th inst. There was lost one small osnaburg bagge with papers between Hungar's Bridge and the Hornes. If any person hath found the said bagg and returns it to the subscriber shall be satisfied to content by

"JOHN LUKE.

"This note sett up at Court."

See Records, vol. 1689-98, p. 212.

<sup>1</sup> Northampton County Records, vol. 1679-83, p. 125. The license of Tully Robinson is referred to in the same Records, vol. 1689-98, p. 45.

<sup>2</sup> Accomac County Records, vol. 1666-70, p. 144. See a note from Colonel John Tilney dated January 18, 1677, employing

also a member of the Accomac bar; and so also was Ambrose White. Other attorneys of prominence belonging to it were George Watson, John Stratton, John Parker, and James Watts. Colonel John Custis too practised in this county. When Philip Parker and his wife were prosecuted by Rev. Thomas Teakle, on the ground that Mrs. Parker had carried off some laces and ribbons owned by his daughter, but really under an impulse of scandalized anger because one Sunday, during his absence, she had participated in a dance at his house, Colonel Custis represented the clergyman, who promised to pay him a fee of five pounds sterling by way of remuneration, but as Teakle died before the fee was delivered, the court refused to allow Custis, as a reward for his services, a sum larger than four pounds.<sup>1</sup>

The attorneys enjoying the largest practice in Middlesex about 1674 were William Leigh and Robert Peyton, both of whom, however, were constantly appearing in the courts of the neighboring counties.<sup>2</sup> At a later

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Tankard to act as 'the attorney for his defence in the Accomac county court; Records, vol. 1676-78, p. 105. Tankard, who signed his name "Tancred" to his will, by which he devised a large estate, very often served as King's Attorney in special cases. In 1684-85 a ship was seized in the waters of Accomac for violating the Navigation Acts. The case was tried before the county court, and Tankard was appointed by the Governor to represent the King; see Accomac County Records, vol. 1682-97, p. 60. As Tankard's will was filed in Northampton County, he, no doubt, resided there; see Records, vol. 1683-89, p. 462. There is a large fund still in existence in England, known as the Tancred Trust—the gift of a lawyer of that name,—the interest of which is applied to the education each year of a certain number of young men for the bar. This Tancred was probably a relative of the Virginian attorney referred to in the text.

<sup>1</sup> Accomac County Records, vol. 1690-97, p. 210.

<sup>2</sup> We find Fitzhugh writing to William Leigh in 1682, and addressing his letter to him as if he were then residing in New Kent county.

period, the membership of the Middlesex bar embraced, among others, Peter Beverley, Thomas Gregson, Sampson Darell, and Thomas Stapleton. [The most prominent lawyer among them all was the elder Robert Beverley, who revealed his energetic temper by combining with that profession the pursuits of a planter and surveyor. His annual income derived from the callings of surveyor and attorney was estimated at three hundred pounds sterling, equivalent in modern figures to about six or seven thousand dollars.<sup>1</sup> That he did not allow his business as a planter and surveyor to prevent him from acquiring a very respectable knowledge of law is shown by Fitzhugh's testimony in 1681; this competent judge of his legal qualifications, writing to Ralph Wormeley, remarked: "I am heartily glad of Major Beverley's association and assistance in this affair, who is in my esteem the best acquainted with the practise part in Virginia."<sup>2</sup>

Perhaps the lawyers enjoying the highest reputation in Lancaster county about 1680 were Thomas George, Thomas Jones, John Taverner, and Charles Harris. At the term of court held for July, 1689, Jones represented the interests of six suitors; and in the following spring, at the April term, he served by himself as the attorney for three, and, in association with other lawyers, for several other clients. Taverner does not seem to have possessed so large a practice as Jones, but his name occurs with frequency in the records of every meeting of the bench. Among the principal members of the bar of Rappahannock in 1685, were Denis

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Leigh enjoyed a lucrative practice in the General Court; see Letters of William Fitzhugh, June 27, 1682.

<sup>1</sup> *Va. Maga. of Hist. and Biog.*, vol. ii., p. 409.

<sup>2</sup> Letters of William Fitzhugh, June 19, 1681.

McCarty and Joshua Davis, John Waters and Richard Robinson. The latter two had, in 1686, been presented by William Slaughter, the high sheriff, because they had neglected to obtain the license required by Act of Assembly.<sup>1</sup> Doubtless, like all the other attorneys of the Colony, they had looked upon this license as a device of Howard to extort additional fees, and had been disposed to defer as long as possible securing it. The members of the Rappahannock bar appear to have been men of public spirit, for, in the course of 1685, several of them served as surveyors of the highways, almost the only office the citizens of Virginia were not over eager to fill.<sup>2</sup> No persons in the community, however, were more interested in well kept public roads than the lawyers, unless it was the physicians, as their profession compelled them to be constantly passing between their homes and the different county seats.

Denis McCarty also enjoyed a lucrative practice in Essex; in 1692, he received from the court of that county eighteen hundred pounds of tobacco as remuneration for prosecuting the various culprits presented by its grand jury.<sup>3</sup> But the principal attorney of Essex seems to have been James Boughan; the records show that, especially in the interval between 1685 and 1695, his services were in constant demand in representing persons in court; and his practice in his office was probably even more valuable. Numerous letters in which he was named as counsel in pending cases have been preserved<sup>4</sup>; and, in some instances, he was retained to

<sup>1</sup> Rappahannock County Records, Orders Aug. 4, 1686.

<sup>2</sup> *Ibid.*, Orders May 6, 1685.

<sup>3</sup> Essex County Records, Orders Nov. 12, 1692.

<sup>4</sup> "Pray appear for me on two ocons, one to February court,

act as attorney in every suit in which his client should, in the future, become involved, whether in the character of plaintiff or defendant.

One of the earliest attorneys to appear in Stafford county was Anthony Bridges, who received his license from Governor Berkeley in 1666. In this document, he was described as a man of "ability and integrity," which, in his case, perhaps, was not entirely the set expression of a legal paper intended to apply to everyone authorized to practise.<sup>1</sup> That Bridges's services were constantly engaged is proven by the number of retainers recorded by persons wishing him to represent them in court during their absence. More prominent as a member of the Stafford bar than even Bridges, although at a later date, was William Fitzhugh, a man who also, like Robert Beverley, showed equal activity in other pursuits. His surviving letters disclose the fact that he was employed in the principal trials, civil and criminal, of his times; and for this work, he was admirably fitted as well by his knowledge of law as by his general accomplishments. On several occasions, he discussed in these letters numerous legal points of great importance, and the character of his treatment revealed unusual mental shrewdness and very extensive information. As planter, trader, and lawyer, he was, throughout his long and useful life, deeply immersed in

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and one to this court, wherein Ralph Whitton is plt. and I am deft. and for yor. soe doinge this shall be your warrant of allowinge, from yor friend

"ROGER BURGOYNE."

"To Mr. James Boughan atto. at law

"Essex, March 10, 1695-6."

<sup>1</sup> See copy of license in Rappahannock County Records, vol. 1668-1672, p. 168, Va. St. Libr.

business, for which he was amply rewarded by the accumulation of a large fortune.<sup>1</sup>

Among the members of the Westmoreland bar in 1684 were Simon Robins, Sigismund Massey, and Alexander Webster. Other attorneys enjoying a share of the practice there were William Horton (who also described himself as a "surveyor"), Gerard Fowke, John Newton, William Payne, Lewis Markham, Valentine Peyton, Willoughby Allerton, and Gerard Lowther. One of the most prominent lawyers associated with this county was Robert Brent, who, however, appeared at the bars of several other counties; the fact that he was a Roman Catholic in faith seemingly did not curtail the demand for his professional services; and this was also true of George Brent, whose practice was equally extensive.

The attorney who, in this part of the Colony, enjoyed the highest reputation for legal attainments was Arthur Spicer, a citizen of Richmond county, but possessing a large practice throughout the Northern Neck. In 1687, being a great sufferer from the stone, he, while attending a term of court in Westmoreland, was compelled to ask the justices to defer, until the following term, the settlement of all the cases in which he had been employed. As they granted this request only on condition that no further postponement should take place, it is probable that his malady had before led to delay in his argument of his clients' causes.<sup>2</sup> His professional services were frequently sought after by the court of his own county, for, in one year alone, he

<sup>1</sup> For legal discussions, see letters dated April 7, Sept. 6, 11, 1679; Feby. 1, 1680; June 10, 1684.

<sup>2</sup> Westmoreland County Records, Orders Aug. 31, 1687.

was allowed in the levy eight hundred pounds of tobacco as a fee for looking after the county's legal business on perhaps more than one occasion.<sup>1</sup> His high standing as a lawyer and as a man of integrity is further shown by the great number of times in which he represented in the courts the interests of English merchants engaged in the colonial trade; as these clients were rarely present when the trial of their suits took place, and as the attorney was impowered very often to receive large sums, they must have felt extraordinary confidence in his talents, learning, and honesty. Nor was such employment confined to a single cause; in 1698, Spicer and Thomas Gregson, of Essex, were chosen by John Miller, a merchant of Bristol, to appear for him in every action, brought in his name or against him, instituted in the General Court, or in any one of the county courts throughout the Colony. It was arranged that the two attorneys were not to unite in the prosecution or defence of a case, but that one or the other, as might be agreed upon between them, should undertake it alone.<sup>2</sup>

Spicer died about 1701. An inventory of his library, in its general and professional features alike, has been preserved in the surviving records. His collection of books contained one hundred and two titles, which would indicate a total of about two hundred volumes. As fifty-two titles related to law, one half of the volumes were purchased in order to be of direct assistance to him in the pursuit of his particular calling. It will be of interest to mention most of the legal works by name as showing those of the greatest use, in these early

<sup>1</sup> Richmond County Records, Orders Nov. 12, 1692.

<sup>2</sup> Essex County Records, Orders Sept. 15, 1698.

times, to the attorney in the full tide of a lucrative practice. There were the *Statutes at Large*, beginning in the year 1640, and ending with 27 Charles the Second; Pulton's edition of the *English Statutes*; Rastell's *Collections of ye Statutes*; *Magna Carta*; *Resolution upon ye Statute of Bankrupt*; *Laws of Virginia*; *Justinian, Third and Fourth Parts*; *Totles's Reports*; *Crown Reports*; *Terms of the Law*; *Directions for the Study of the Law*; *Noy's Maxims*; *Wingate's Body of ye Common Law*; *Shepperd's Epitomy*; *Keeble's Justice of the Peace*; *Dalton's Justice of the Peace*; *Law concerning Justices of the Peace*; *Lambert's Office of a Justice of the Peace*; *Fleetwood's Office of a Justice of the Peace*; *The Conveyancer's Light*; *Herne's Conveyances*; *Practical Register*; *The Complete Attorney*; *The Attorney's Academy*; *The Complete Lawyer*; *Kitchen's Jurisdiction of Courts*; *Wingate's Abridgments*; *Mysteries of Clerkship*; *The Clerk's Tutor*; *Clerk's Guide*; *Office of Executor*; *The Layman's Lawyer*; *Finch's Law*; *Judge Jenkins's Works*; *Jura Maritima*; *A Preparation to Pleading*; *Declarations and Pleadings, Fines and Recoveries*; *Perkins's Treatise*; *Horne's Mirrors*; *Collection of Orders in Chancery*; *West's Precedents*; *West's Symbolographia*; *A Book of Entries*; *Bacon's Elements*; *Index of Sentences*; *Practical Part of Law*; *A Dispute between a Common and Civilian Lawyer*; and the *Life of Sir Matthew Hale*.<sup>1</sup>

From the point of view of the library of a modern lawyer engaged in the active pursuit of his profession, this collection of legal authorities does not appear to be remarkable either in number of volumes, or in the variety of their contents; but when it is remembered that

<sup>1</sup> Richmond County Will Book for 1701.



Spicer was an attorney residing in a remote colony, and that his clients were principally suitors in the county courts, the general character of these books throws a very favorable light on the extent of his legal attainments, as well as on the breadth of ground covered by his practice. There was hardly a department of law not represented in at least one work among those in his possession, whilst several departments were treated in four or five separate works. Naturally, he would be in most need of treatises relating to the jurisdiction of the Justices of the Peace, in whose courts his professional business brought him most frequently, and it is, therefore, no cause for surprise to find that his library contained not less than five titles bearing on this single subject. But the jurisdiction of the county court in Virginia was much more extended than the jurisdiction of the corresponding bench of justices in England, to which these volumes appertained more particularly; as we have seen, the county court combined in its jurisdiction the jurisdictions of all the leading English courts, and hence the attorney practising before it, was, in order to attain to the highest distinction, compelled to possess a very considerable knowledge of the whole field of law. Such a knowledge was reflected in the variety of subjects represented in the titles of Spicer's legal volumes, not one of which had probably been purchased for mere general reading, but rather as bearing directly on legal questions coming up constantly in the course of his practice. There is no reason to think that the collection of legal works owned by him was, either in their number, or diversity of topics, exceptional among the collections possessed by those of his contemporaries who had won an equally high standing at the bar, and were in the enjoyment

of an equally lucrative business. In preparing his cases, the lawyer of these times was forced to rely chiefly on the legal works in his own possession; he might occasionally borrow a volume from a fellow attorney or some friend among the planters; but in the end, he would find himself almost fatally hampered unless he had had the foresight to purchase such authorities as he had reason to know he would urgently need. And there is no ground for thinking that the majority of the more distinguished lawyers residing in the Colony during the Seventeenth century neglected to take this obvious precaution.

There was another feature of Spicer's collection of books which was, no doubt, characteristic of all the libraries owned by men prominent in the same profession:—the titles were not confined to treatises touching upon the various departments of law, but, on the contrary, included three works pertaining to medicine; thirty-five to religion and morals; four to belles-lettres; seven to history and biography; and eight to general subjects. Nor were the titles restricted to the English language; among the volumes composing the collection were some of the most celebrated classics in the Latin tongue, such as the discourses of Socrates and Cicero, the plays of Terence and other great Latin dramatists.

## CHAPTER XII

### County Court: Clerk and Sheriff

FROM some points of view, the most important functionary connected with the county court was the clerk, whose duties did not differ substantially from what they are at the present day. This office was probably created at the same time as the monthly court itself, as that court appears to have been one of record from the very start. From the beginning, it must have been indispensable that there should be someone to make an entry of all the matters of controversy to be decided, and all the judgments actually agreed upon, by the justices; and the same necessity continued to operate always afterwards. The Governor alone seems, during the earlier years of the Colony's history, to have been empowered to appoint clerks of the county courts. In 1642, Berkeley nominated Edwin Conway to this position in Accomac, and in doing so, mentioned, as the ground of his authority, the instructions which he had received from the English Government, along with his commission, to name every public officer in the Colony, with the exception of a few of the principal ones.<sup>1</sup> This right had, no doubt, been possessed by all the Governors who had preceded him;

<sup>1</sup> See Accomac County Records, vol. 1640-5, p. 146; Hening's *Statutes*, vol. i., p. 305.

but a few years after Conway's appointment, Berkeley seems to have granted to Richard Kemp, the Secretary of Virginia, the power, not only of nominating the different clerks of the county courts, but also of displacing an incumbent whenever he deemed it advisable.<sup>1</sup> After the General Assembly passed an Act declaring that all causes, no matter how great the sums or values involved, should be tried in these courts, and that the justices should issue letters of administration, a large number of fees previously coming to the Secretary were at once diverted from his pocket, and it was considered only proper that he should be permitted to make some composition with the clerks in lieu of such profits.<sup>2</sup> In order to give the Secretary the information to proceed upon, these officers were required to report to the General Court every instance in which letters of administration had been granted.<sup>3</sup>

There are numerous indications that the clerks of the county courts were frequently men belonging to families of conspicuous influence. Some were of distinguished personal connections in England as well as in Virginia; in 1673, for instance, a Mr. Hill was appointed by Secretary Ludwell to the clerkship of Surry county on the earnest recommendation of Lord Fitzhardinge.<sup>4</sup> As it was permissible to combine the office with other

<sup>1</sup> Lower Norfolk County Records, vol. 1646-51, p. 6; vol. 1651-56, p. 110. This power remained with the Secretary until the end of the century; see Essex County Records, vol. 1692-95, pp. 156, 257, Va. St. Libr. The clerk himself was authorized to appoint his own deputy, but the court's consent had to be first obtained; see Henrico County Records, vol. 1677-92, orig. p. 105.

<sup>2</sup> See orders of General Court entered in Lower Norfolk County Records, vol. 1646-51, p. 6.

<sup>3</sup> Lower Norfolk County Records for 1646.

<sup>4</sup> Surry County Records, vol. 1671-84, p. 70, Va. St. Libr.

positions perhaps more lucrative, it was not considered even by men of good estates and of great political importance to be unworthy of their acceptance. It shows how far this combination of other offices with a clerkship was carried during the years preceding the Insurrection of 1676 that one man was allowed to perform, in addition to its duties, the duties of county surveyor, escheat master, and public notary, all places of decided profit.<sup>1</sup> The office of clerk by itself must have been the source of a large income to the incumbents. At one time, as we have seen, they were authorized to practise as attorneys in their respective courts; and even after this was forbidden, they, no doubt, derived many fees from drawing up legal papers for their private clients. Independently, however, of these services, the fees which they were permitted by Act of Assembly to charge for their ordinary duties as clerks assured them an ample return for their labor. The rates of remuneration prevailing in 1643 show the extent to which they were rewarded at that time:—each clerk was empowered to demand eight pounds of tobacco for every certificate, deposition, single warrant, or order of court he was called upon to copy; and for an order of execution on an estate, the fee was to be twelve pounds of that commodity.<sup>2</sup> For the like clerical work, he was, at a later date, authorized to ask larger sums, owing to the gradual falling off in the salable value of tobacco. By an Act of Assembly passed in 1664, no one was permitted, except by public order, to examine the records without the clerk's assistance, or at least his supervision<sup>3</sup>; this was adopted

<sup>1</sup> Winder Papers, vol. ii., p. 206.

<sup>2</sup> MS. Laws of Va., 1642-3, Clerk's office, Portsmouth, Va.

<sup>3</sup> Hening's *Statutes*, vol. ii., p. 211.

as a measure of precaution; and it is probable that no one was allowed to obtain an extract from these records unless it was written by this officer with the right of charging a fee for the same.

Subordinate to the clerk of the county court was the cryer, whose principal duties consisted of calling witnesses during the progress of a trial, and carrying out the justices' commands for the preservation of order and decorum in the court-room. He received twelve hundred pounds of tobacco annually by way of remuneration.<sup>1</sup> His services were only needed during the terms of the court, which, as we have seen, were held on the average about eight times in the course of a single year; the usual term probably did not last longer than a few days; and it was, therefore, feasible for him to combine this office with some other calling which would occupy the far greater share of his attention. In this respect, the cryer's office differed from the clerk's. As soon as a permanent place was chosen for the meetings of a county court, especially after the erection of a court-house building, it was probably imperative, even when the justices were not sitting, for the clerk to pass the greater part of his time there since he was the custodian of the records, and a public servant constantly asked to give information, or to furnish the copies of legal documents required by the people in the course of their ordinary affairs. Those clerks who sought to combine other pursuits with their principal calling—pursuits which necessarily took them away very often from their office in the court-house,—no doubt, provided against the contingency of their absence by employing deputies of recognized competency and integrity.

<sup>1</sup> Lower Norfolk County Records, Orders March 19, 1683-4.

From some points of view, the sheriff was a more important officer than the clerk. In the early years of the Colony's history, his duties seem to have been performed by the provost-marshal. At first, there was not only a provost-marshal-general, but also a provost-marshal-special, whose bailiwick was confined to a single locality or settlement. During Argoll's administration, John Hudson occupied the office of provost-marshal for Virginia at large, but he soon incurred the Governor's displeasure to such an extent that he was described as "a viper in the young and tender bosom of this so religious and hopeful an action"; and for his supposed crimes against the established order was condemned to death; but this was finally commuted to banishment from the Colony.<sup>1</sup> A short time before, Argoll had appointed William Craddock to the post of provost-marshal for the corporation of Bermuda City, and in explanation of this step, which was perhaps unusual, he announced that it was necessary to have an officer of an honest and careful reputation in all "places of wars and garrison towns." Craddock was ordered to become the custodian as well of all persons arrested as delinquent as of all persons taken prisoners in open hostilities; and he was empowered to summon the captains and soldiers and the citizens in general to assist him in suppressing whatever faction, mutiny, or rebellion should arise in the part of the Colony subject to his supervision.<sup>2</sup>

During the time the military laws were in operation, these strict regulations seemed to require the establishment of such a military office as the provost-marshal's, but even after the abolition of this rigid system by

<sup>1</sup> Randolph MS., vol. iii., p. 143.

<sup>2</sup> Proclamation of Argoll, Randolph MS., vol. iii., p. 141.

the instructions given to Yeardley in 1618 (which were confirmed by the great Charter of 1621 brought over to Virginia by Wyatt), this office remained in existence; but, no doubt, under the new order of affairs, when the rights of every citizen as an English subject were so clearly recognized, the provost-marshal's duties were substantially those of a high sheriff. In the course of 1621, William Newce was the occupant of the position; and for its proper support, the Company had assigned fifteen hundred acres of land and fifty tenants to cultivate them.<sup>1</sup> A table of fees was drawn up in 1626 to govern the provost-marshal in his charges. It should be remembered that, at this time, the value of tobacco was very much greater than at a later date. He was impowered to demand one pound of that commodity, and also one bushel of corn, for making an arrest, and two pounds of tobacco and one bushel of corn for committing to prison or granting a release; he was also impowered to demand five pounds of tobacco for delivering an ordinary summons to court; and he had the right to demand the same fee in every case in which he was compelled to lay a prisoner by the heels, and ten pounds if the sentence required that the culprit should be whipped, ducked, or pilloried.<sup>2</sup> As the price of tobacco fell, the amount of the respective fees which the provost-marshal was allowed to charge increased; in 1632, for instance, when the value of tobacco was much smaller to bulk, owing to the large quantity now produced in the Colony, this officer was authorized to demand ten pounds of that commodity for every arrest that he made; ten for every committal to prison, or release therefrom; ten also for inflicting

<sup>1</sup> Randolph MS., vol. iii., p. 161.

<sup>2</sup> *Va. Maga. of Hist. and Biog.*, vol. iv., p. 23.



a public whipping or ducking, or for thrusting into the pillory; and five for laying a prisoner by the heels.<sup>1</sup>

As late as 1633, a marshal was to be found in at least one of the Colony's divisions; Richard North, in that year, occupied this position in Accomac; and there was probably a similar official performing the like duties in other parts of Virginia. In 1633, too, Walter Scott who was also a citizen of Accomac, was described in its records as "our provost marshall," and is stated to have presented a warrant to William Robins as his authority for levying tithes.<sup>2</sup> In the following year, he was still serving under that name, although William Stone had, by the terms of an order adopted by the Governor and Council, dated March, 1633-4, been appointed sheriff of that shire. At the same time, sheriffs had been nominated for all the newly created shires situated in the Colony.<sup>3</sup> After this, no more is heard of the provost-marshal in association with the counties, although it is possible that, for some years, the name was applied to the commander of the county, an officer who possessed military powers resembling some of those exercised by an ordinary provost-marshal.

It was provided by law, in 1634, that the Governor for the time being, acting with the advice and consent of his Council, should have the right to designate the sheriff to serve for each county<sup>4</sup>; and he continued to enjoy this right throughout the remainder of the Seventeenth century. As in the case of a justice's

<sup>1</sup> Hening's *Statutes*, vol. i., p. 201.

<sup>2</sup> Accomac County Records, vol. 1632-40, p. 11, Va. St. Libr.

<sup>3</sup> *Ibid.*, p. 18, Va. St. Libr.; see also Randolph MS., vol. iii., p. 222.

<sup>4</sup> Randolph MS., vol. iii., p. 225; see also Randolph MS., vol. iii., p. 233, containing Acts of 1639, and Robinson Transcripts, p. 225, Acts of 1641.

nomination, so in the case of a sheriff's, he was generally influenced in making the appointment by the special recommendations of the members of the county bench, the body with whom the new officer would be most closely associated, and whose preferences, therefore, were entitled to the first consideration. In the course of 1636, the justices of Accomac, presenting to the Governor a list of six names, requested him to choose one of the bearers as sheriff; and this method was, during many years, probably the usual one, for whilst it assured the nomination of some one who would be agreeable to the judges, it, at the same time, did not seriously restrict the Governor in his latitude of selection.<sup>1</sup> In 1641, the justices of the same county presented a list of ten names, which gave him still wider room in making his choice.<sup>2</sup> This plan of choosing this officer seems to have become obligatory during the time of the Commonwealth, for, in the course of 1654, the General Assembly enacted that the Governor, with the consent of the Council, should appoint as sheriff only some one whose name had been included in a list of three or more submitted for his consideration by the justices of the county whose shrievalty was to be filled.<sup>3</sup> After the restoration of the royal power, it frequently happened that a county court would recommend for the officesome person they, for special reasons, were anxious to see commissioned; but it was now within the Governor's discretion whether or not he should comply with their wishes. In 1665, the justices of York urged Berkeley to nominate Colonel Ralph

<sup>1</sup> Accomac County Records, vol. 1632-40, p. 56, Va. St. Libr. In 1637, a list of three was presented; see *Ibid.*, p. 91.

<sup>2</sup> Accomac County Records, vol. 1640-5, p. 74, Va. St. Libr.

<sup>3</sup> Acts of Assembly, 1654, Randolph MS., vol. iii., p. 260.

Langley as sheriff of that county, on the ground that his house, and the greater part of his household articles having been recently destroyed by fire, the position would be of very great assistance to him.<sup>1</sup>

It was provided by the memorable Act of 1660-1 that the sheriff of a county should always be a member of its bench. Not long after this rule went into effect, the custom of the office being filled by the judges in turn sprang up, as it was not deemed equitable to impose its burdens on one man indefinitely; and that this custom was approved by successive Governors was shown by their commissioning the justices in rotation.<sup>2</sup> This, however, they seem to have done only after they had received a special request from the members of the court, embodied in a written or verbal petition, mentioning the name of the one among them whose turn had come around again.<sup>3</sup> During many years after 1660, the same man might hold simultaneously the offices of clerk, escheator, surveyor, and sheriff of the same county. This combination of offices, so full of responsibility and attended by so much profit, in the possession of a single incumbent, was very properly considered to be injurious to the public interests, and among the first measures adopted by the Reform Assembly of 1676 was one declaring it to be thereafter illegal.

<sup>1</sup> York County Records, vol. 1664-72, p. 75, Va. St. Libr.

<sup>2</sup> Hening's *Statutes*, vol. ii., pp. 21, 78. We find the following entry in the York County Records, vol. 1664-72, p. 8, Va. St. Libr.: "I understand by Colonel Bacon that Mr. Peters is next in turne to be sheriff in your county; if it be so, I think him a person very fit and worthy, and I, therefore, give my consent he should have it, William Berkeley." This appointment was dated Oct. 5, 1665.

<sup>3</sup> York County Records, vol. 1664-72, p. 8, vol. 1671-94, p. 45, Va. St. Libr.; see also a letter of Berkeley appointing a sheriff for Northampton county March 27, 1669, in vol. 1664-74, f. p. 65.

Should any person, in spite of this Act, presume to concentrate all these offices in himself, he was to be sentenced to pay a fine of five hundred pounds of tobacco for every week of enjoyment. Not only was it unpermissible for a sheriff to hold any other office, but he was also required either to be a native of the country, or to have been a resident for a period of at least three years; nor was anyone to be appointed who had been convicted of a notorious crime.<sup>1</sup>

After the deposition of James the Second, a sheriff was required to take the new oaths prescribed by Parliament, and also to subscribe the Test to show that he had no belief in the doctrine of transubstantiation.<sup>2</sup> Owing to the prevalence of the English laws in Virginia, a sheriff's duties were, from the beginning, well defined; and, from time to time, these duties were modified or added to by special Acts of Assembly.<sup>3</sup> One of the most important in that officer's relation to the Colony at large, was to keep in safe custody, until he could deliver them at Jamestown for trial, all prisoners whose crimes were punished by loss of life or limb.<sup>4</sup> In the same general relation, he was expected to submit to the Assembly a full report of all those public assessments and fees (imposed for the support of such officers as the Governor and Secretary) which he had been ordered to collect; and to ensure the faithful performance of this

<sup>1</sup> Hening's *Statutes*, vol. ii., p. 353.

<sup>2</sup> Henrico County Records, Orders June 1, 1697.

<sup>3</sup> The duties of the Virginian sheriff at this time differed very radically from those of the English in one important particular, namely, he held no sheriff's court; see letter of Thomas Ludwell to Lord Arlington, 1666, Winder Papers, vol. i., p. 203. In England, all cases involving values of forty shillings or under were determined in the sheriff's court. He was denied all criminal jurisdiction.

<sup>4</sup> Hening's *Statutes*, vol. i., p. 265.

duty, he was required to give a bond with a heavy penalty. To him was also paid the whole amount of the quit-rents.<sup>1</sup> As to his duties as an officer of a county, he was obliged to serve all subpoenas; to make all arrests; to sue out attachments; to execute writs; to be present at the appointed spots to receive the annual taxes; and to distribute them according to the provisions of the annual levy.<sup>2</sup> He was also obliged to attend every meeting of the county court for the purpose of carrying out the justices' orders. It was sometimes optional with him whether he should release a prisoner on bail.<sup>3</sup> At times, he was invested with some of a grand jurymen's powers; for example, in the course of 1657, so many serious offences were committed in Lower Norfolk, without their being questioned or punished, owing to a failure to report them, that the justices of that county authorized the sheriff of his own motion to summon all culprits to answer at the next term.<sup>4</sup> One of this officer's principal duties was to call the people together to cast their votes in an election for the House of Burgesses; and he also proclaimed the accession of a new King.<sup>5</sup> It was his duty too to announce publicly at the court-house, when the people

<sup>1</sup> Hening's *Statutes*, vol. i., p. 284; letter of Ludwell to Arlington, 1666, Winder Papers, vol. i., p. 213.

<sup>2</sup> Hening's *Statutes*, vol. i., p. 295. See also an agreement between a sheriff and his deputy in Accomac County Records, vol. 1640-45, p. 151, Va. St. Libr., which gives a complete list of the sheriff's duties.

<sup>3</sup> Lower Norfolk County Records, vol. 1646-51, p. 206.

<sup>4</sup> *Ibid*, vol. 1656-66, p. 96.

<sup>5</sup> "The High Sheriff calling and convocating together all the people then present did in ye courtyard with an audible voice proclaim James II. King of Great Brittain, France and Ireland"; see Westmoreland County Records, vol. 1675-88, p. 407.

were assembled on a court-day, the annulment of an Act of Assembly by the veto of the King.<sup>1</sup>

It was provided, in 1642-3, that the sheriff's term should continue for twelve months; and this law was re-enacted in 1657-8<sup>2</sup>; but by the end of two decades, the period either had been extended, or re-election was so customary that the prescription of one year had come to have no importance. Among the grievances offered by several counties to the English Commissioners, after the suppression of the Insurrection of 1676, was one that condemned the prevailing rule allowing a sheriff, without reappointment, to serve for a longer time.<sup>3</sup> How this rule was established under the arbitrary political system existing previous to 1676 was illustrated in the action of Robert Canfield and Arthur Allan, justices of Surry, who, in 1678, attempted to continue this one of the numerous evils of that system in the teeth of a positive order of the Governor. Jeffreys had nominated Colonel Swann to the office of sheriff of that county, but in spite of this fact, these two men persuaded their associates on the bench to retain the old sheriff in his position as though he had an indisputable right to fill it as long as he desired. Canfield and Allan soon found that the day of the Long Assembly, and of those selfish and high handed methods which that body had directly or indirectly encouraged in every branch of the public service, had passed; their prompt suspension on account of their open defiance of the

<sup>1</sup> Lower Norfolk County Records, vol. 1675-86, p. 179<sup>2</sup>.

<sup>2</sup> MS. Laws of Virginia, 1642-3, Clerk's office, Portsmouth, Va.; Hening's *Statutes*, vol. i., p. 442. This was the law in England, where it had been established by a succession of statutes. Until a new sheriff was named, however, the office could not be determined except by the existing sheriff's death, or the King's demise.

<sup>3</sup> See Grievances of the Counties, Winder Papers, Va. St. Libr.

Governor's mandate and entire disregard of one of the Colony's oldest regulations, followed almost immediately, and Swann was inducted into the office to which he had been appointed.<sup>1</sup>

The sheriff's office was attended by very considerable profit. By an Act passed in 1642-3, he was expressly permitted to charge a fee of ten pounds of tobacco for every arrest which he made; and also the same amount for every bond to keep the peace which he issued; for every commitment to prison or release therefrom; and for the service of every subpoena. The fee for delivering a summons to court was four pounds of the same commodity; and for placing a culprit in the pillory, or for whipping him, twenty pounds. The fees which the sheriff was allowed to impose for an execution on property were governed by a graduated scale:—if the amount of the judgment fell below one hundred pounds of tobacco, the fee was not to exceed ten; but if the amount of the judgment rose to a figure above a thousand pounds of tobacco, but under two thousand, then the fee was to be sixty pounds. When the judgment exceeded two thousand pounds of tobacco, ten pounds were to be added to the fee for every additional one thousand.<sup>2</sup>

The shrievalty was invested with as much dignity in Virginia as it was in the Mother Country itself. There is but one instance in the Colony's history, and this occurred at an early date, in which a sheriff was condemned to the ignominy of a public whipping; but that he regarded such a punishment for his offence, whatever it may have been, as unjust, is shown by his

<sup>1</sup> Surry County Records, vol. 1671-84, p. 273, Va. St. Libr.

<sup>2</sup> MS. Laws of Va., 1642-3, Clerk's office, Portsmouth, Va.

prompt appeal from the sentence to the General Court.<sup>1</sup> From the year the Governor was required to appoint some one of the members of the county bench to serve in this office, the whole body of sheriffs was made up of the foremost citizens of the Colony. It included, at different times, such men as Daniel Parke and John Page, of York; Benjamin Harrison, of Surry; George Newton, of Lower Norfolk; John Farrar and Richard Cocke, of Henrico; William Armistead, of Elizabeth City; Robert Dudley, Matthew Kemp, and Sir William Skipwith, of Middlesex; Henry Awbrey and John Taliaferro, of Essex; William Ball and David Fox of Lancaster; Walter Brodhurst, John Lee, Isaac Allerton, and Laurence Washington, of Westmoreland; Rodham Kenner and John Turberville, of Northumberland; Edmund Scarborough, John Custis, Hancock Lee, and Colonel John Stringer, of Northampton; John West, Southey Littleton, Daniel Jenifer, and John Culpeper, of Accomac; Robert Bolling of Charles City; William Bassett, of New Kent; and George Mason, of Stafford. Every one of these citizens, who belonged to different periods, was a member of a family of great influence derived from the possession of both wealth and talents; and this will be found to be equally true should we examine the list of sheriffs for any single year.<sup>2</sup>

<sup>1</sup> Robinson Transcripts, p. 29.

<sup>2</sup> See List of Sheriffs for 1699, Minutes of Council, June 3, 1699, B. T. Va. It was said of the English sheriff by Blackstone that "as the keeper of the King's Peace both by common law and special commission, he is the first man in the county and superior in rank to any nobleman therein during his office"; see Commentaries.



## CHAPTER XIII

### County Court: Constable, Coroner, and Grand Jury

DURING the early part of the Colony's history, the constables seem to have been chosen, probably by the justices, for the several precincts of each county. In 1645, Lower Norfolk possessed four such local divisions, and a special officer of this kind had been named for each.<sup>1</sup> Eight years afterwards, the number of precincts in this county had increased to seven, and in each there was a constable performing the duties of his place.<sup>2</sup> There were in Henrico, in 1699, five constables or one to serve in each of the five precincts.<sup>3</sup> The person appointed to this subordinate position was very frequently a man of considerable prominence and influence; for instance, in Essex in 1692, Henry Awbrey occupied it; and in 1699, John Taliaferro, who had, at one time, been the high sheriff of the county.<sup>4</sup> No office existing in Virginia during the Seventeenth century was too

<sup>1</sup> Lower Norfolk County Records, Orders June 16, 1645.

<sup>2</sup> *Ibid.*, vol. 1651-56, p. 44. "It is ordered yt Teague Anderson be appointed headborough in Roger Merchant's precincts, ditto William Alworth in Morris Lester's precincts"; Accomac County Records, vol. 1666-70, p. 139.

<sup>3</sup> Henrico County Records, Orders April 15, 1699.

<sup>4</sup> Essex County Records, Orders May 10, 1692, June 19, 1699.

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insignificant, or even too humble, to be filled by men of marked social consideration and valuable estates. The chief reason of this apparent anomaly was that, for long periods, no objection was raised to the concentration in one person of all the functions of several offices. At no time did there seem to be any opposition to the incumbent of the position of constable combining with it other positions perhaps more lucrative; its salary would only add so much more to the income derived by that incumbent from the enjoyment of several other offices; and if there were fees to be obtained for any service, he was probably not the man to allow them to pass into another person's hands, were it possible to prevent it.

The office of coroner was filled by citizens as conspicuous in their several communities as those who, from year to year, were nominated to the shrievalty; indeed, as a rule, the coroners were also appointed by the Governor from among the members of the county courts. Nor was it thought that there was any incompatibility in holding the two positions simultaneously<sup>1</sup>; the elder Robert Beverley served as the coroner of Middlesex, and John Custis, of Northampton; David Fox, who was a leading member of the bench of justices for Lancaster, occupied the same office at one time; so did John Farrar, Richard Cocke, William Randolph, and the elder William Byrd, of Henrico, perhaps the most prominent and influential persons of their day residing in that county. Robert Beverley and William

<sup>1</sup> York County Records, vol. 1684-87, p. 182, Va. St. Libr., Henrico County Records, vol. 1677-92, orig. p. 383. In 1695; Captain Edward Thomas and Thomas Edmondson, who were justices of Essex county, were also coroners; see Orders, Nov. 11, 1695.

Byrd were in possession of the largest estates which, up to that date, had been accumulated in Virginia, and in the course of their careers, they filled nearly every public position in the Colony above the grade of a constable. Not infrequently, when a suspicious death had occurred, the magistrate whose home was nearest to the spot was directed by the county court to hold the inquest<sup>1</sup>; as each of the justices was liable to be called upon at any moment to serve in this manner, the most distinguished citizens of Virginia, merely by virtue of that office, occupied the coroner's position at least temporarily. Nor did they perhaps think the less of its duties because the rewards attached to it were often considerable; in 1680, Abell Gower, of Henrico, was allowed two hundred and sixty-eight pounds of tobacco for sitting on two corpses<sup>2</sup>; and this seems to have formed the regular fee under these circumstances, for, in 1684, Thomas Batte, of the same county, was paid one hundred and thirty-three pounds of the same commodity for holding an inquest over a single body.<sup>3</sup>

This did not constitute the only duty of the coroner; he seems to have sometimes acted as an administrator of the deceased person's estate; for instance, in 1690, William Randolph, having returned to the county court an account of all property belonging to John

<sup>1</sup> "Whereas complt. was made to the court that John Wyre lately deceased is suspected to have come to an untimely end, it is, therefore, ordered by the court that ye sheriff forthwith summon a jury of twelve men of ye neighbourhood, and also give notice to ye next magistrate to sit as coroner on ye corps of ye said Wyre"; Northampton County Records, vol. 1679-83, p. 97.

<sup>2</sup> Henrico County Records, vol. 1677-92, orig. p. 146.

<sup>3</sup> *Ibid.*, vol. 1677-92, orig. p. 288. In 1698, fees were allowed in Essex county for four inquests; see Orders Nov. 12, 1698.

Johnson, who had apparently come to a violent death, was ordered to sell the whole of it at a public outcry. It is probable that Johnson had been without friends or relatives residing in Henrico.<sup>1</sup>

The relation borne to the county court by the grand jury was, from some points of view, more important than that borne to it by the sheriff, constable, and coroner combined. This body began its work in Virginia as soon as the administration of law was organized there on the footing which had prevailed in England immemorially. In a previous chapter, I dwelt on the active part taken by the grand jurymen, in association with the churchwardens, in directing the justices' attention to the worst offences against good morals committed in their several communities; but the scope of their duties was very much wider than this, for they had cognizance as well of the greater number of the most serious infractions of the criminal code. Meeting twice a year, the first time in March and the second in August,<sup>2</sup> they were empowered by an Act passed as early as 1645 to receive on each occasion all presentments and informations, and to inquire into every case of felony and misdemeanor excepting those the punishment of which involved the loss of limb or life. Should they find a true bill, they proceeded, as in England, to bring the case before the county court for final investigation.<sup>3</sup>

In a charge delivered by the justices of Lower Norfolk to the grand jury of that county in 1662, there is a detailed statement of the duties which this important

<sup>1</sup> Henrico County Records, vol. 1682-1701, p. 288, Va. St. Libr.

<sup>2</sup> By an Act passed in 1660, the dates were fixed for April and December; see Hening's *Statutes*, vol. ii., p. 74.

<sup>3</sup> Hening's *Statutes*, vol. i., p. 304.

body was expected to perform at that time. First, they were to present all persons shown to be guilty of certain offences against morality, such as common swearing, blasphemy, profaning the Sabbath, remaining away from public worship, committing fornication, attending unlawful assemblies under the cloak of religion, living together under pretence of marriage, and declining to have their children baptized. In the last three cases, the prosecution of the Quakers was designed. Secondly, they were to present all persons who had committed treason, petty treason, murder, rape, and other felonies, which, when the punishment involved a loss of limb or life, were to be tried, not by the County, but by the General Court. Thirdly, they were to present the county court itself, should that body have failed, for instance, to erect a pillory, pair of stocks, or whipping post, or to build a prison or a tanhouse; or have neglected to order the vestry, after dividing the parish into precincts, to send word to each precinct's inhabitants to come together to see the bounds and marks of every man's land, situated within it, renewed at the usual time between Easter and Whitsuntide; or have omitted to appoint surveyors of highways every year as required by law, or to set up, for the public use at the court-house, the weights and measures adopted as the legal standards. Fourthly, they were to present every person who started false rumors calculated to produce a breach of the peace; or enclosed and obstructed the public roads; or planted tobacco after July 10th; or tended seconds and slips; or failed to plant ten young mulberry trees for every one hundred acres of land in his possession, or to sow two acres of corn for every tithable in his employment; or exported hides, wool, iron, English merchandise, or sheep or

mares; or made a tobacco cask larger than the lawful gauge, or of unseasoned timber; or showed, by promiscuous firing at a festival, that he was intoxicated; or neglected to provide the proportion of arms and ammunition demanded of every citizen; or, being a miller, exacted one sixth of the corn or wheat as his toll, and kept no weights and measures.

The justices closed with the solemn words: "By the performance of these [commands], you will discharge your duties to God and to the King, and shew yourselves necessary members in promoting the good of the commonwealth."<sup>1</sup>

This address contained all the most important injunctions laid upon the grand jury during the remainder of the century. Certain statutes were in force at one period which were not in force at another, and to that extent only did the charge of one decade differ from the charge of the preceding or the following. Substantially, however, all the charges to the grand jury were the same; and they reveal the earnest and resolute spirit in which the justices of the county courts sought to put all the laws relating to the prevention of crime and the preservation of peace into the fullest operation.

What were the usual features of the presentments as throwing light on the nature of the offences which the community's evil-inclined members were most prone to commit? In the report made by the grand jury of Lower Norfolk in December, 1654, the persons indicted had been guilty of one of the following acts:—fornication; incontinence before the marriage ceremony; disregard of the prices fixed by law in selling; a theft of corn; the use of improper weights and scales;

<sup>1</sup> Lower Norfolk County Records, vol. 1656-66, p. 351<sup>2</sup>.

or the violation of the Sabbath.<sup>1</sup> Twenty years afterwards, the grand jury of the same county, in their report to the bench, boldly presented the justices themselves for their failure to purchase weights and scales for public use, to hold the terms of the court for the proper length of time, to establish a workhouse, and to see that the usual procession for the preservation of metes and bounds was frequently repeated. All these derelictions were expressly provided against by Acts of Assembly. Individuals, on the other hand, were, in the same report, presented for the crimes of theft, adultery, incest, and bigamy; and for the lesser offences of stirring up strife between husband and wife, omitting to mend a highway, carrying a gun on Sunday, and killing an animal belonging to some one else.<sup>2</sup> There were, in 1685, indictments in Lower Norfolk county for conveying a traveller on horseback on Sunday for a fee; for trimming and planting a nursery on the same sacred day; for sending a boy, also on Sunday, to a tannery with a hide; for stopping up a public highway; for carrying a citizen out of the Colony by force; and for extortion, common swearing, and common drunkenness.<sup>3</sup>

The presentments elsewhere were of the same general

<sup>1</sup> Lower Norfolk County Records, vol. 1651-56, p. 114.

<sup>2</sup> *Ibid.*, vol. 1675-86, p. 40. Indictments of justices for similar acts of neglect were not uncommon; see same Records, Orders June 1, 1686. All presentments of the justices, it seems, were to be finally laid before the General Court; see Lower Norfolk County Records, vol. 1656-66, p. 351<sup>2</sup>; also Westmoreland County Records, vol. 1690-98, pp. 66, 67. These indictments of justices were sometimes made more significant by the fact that the foreman of the grand jury was often a leading lawyer. Charles Holden and John Tankard frequently served in this capacity on the Eastern Shore.

<sup>3</sup> Lower Norfolk County Records, vol. 1675-86, p. 202.

nature, as the following from the Henrico records will show:—in 1685, the grand jury of that county reported a number of persons who had been guilty either of building their tobacco casks of a larger size than the law permitted; or of refusing to grant the legal rates in grinding corn; or of omitting to keep steelyards in a mill, as required by Act of Assembly; or of concealing a tithable; or of tending seconds; or of packing ground leaves, slips, and rubbish in hogsheads; or of failing to plant in corn the area prescribed by statute.<sup>1</sup> In Westmoreland, in 1692, presentments were made for common swearing, adultery, fornication, drunkenness, and a theft of hogs; and also for neglect to plant corn, to attend church, and to repair the highways. The other offences enumerated in this report consisted of stopping the public roads, obstructing the rivers with posts and stakes, tilling the fields on Sunday, and selling liquor without a license.<sup>2</sup> The grand jury of Isle of Wight county, in 1693, indicted persons guilty of the misdemeanor of beating their host and disturbing the company; of striking a grand jurymen; and of committing incontinence.<sup>3</sup>

Such was the general complexion of the grand jury's presentments throughout the Seventeenth century. At many meetings of that body, it was found that there were no indictments at all to make<sup>4</sup>; and, as a rule, the offences reported were far from heinous in their nature. The rareness with which serious crimes occurred in the Colony was remarked upon by the travellers who visited it in these early times; and the absence of such

<sup>1</sup> Henrico County Records, vol. 1677-92, orig. pp. 312-13.

<sup>2</sup> Westmoreland County Records, vol. 1690-98, pp. 66, 67.

<sup>3</sup> Isle of Wight County Records, vol. 1688-1704, p. 90.

<sup>4</sup> See Middlesex County Records, Orders April 1, 1689.



crimes is the more impressive at first view when it is recalled that so large a part of Virginia was in the condition of a frontier country, where a certain degree of lawlessness was to be expected. No single fact shows more plainly the conservative and peaceful character of the Colony's inhabitants than the comparative fewness of the attacks upon life noted in the records. Even the smaller offences were not often perpetrated. The author of *Leah and Rachel*, writing about 1656, declared that

theft was seldom punished as being seldom or never committed, for as the proverb is where there are no receivers, there are no thieves; and although doors are nightly left open (especially in summer time), hedges hanging full of clothes, plate frequently used amongst all comers and goers (and there is good store of plate in many houses), yet I never heard of any loss ever received either in plate, linen, or anything else out of their houses all the time I inhabited there.<sup>1</sup>

<sup>1</sup> *Leah and Rachel*, p. 15, Force's *Hist. Tracts*, vol. iii.

## CHAPTER XIV

### County Court: Punishments for Crime

**A**LTHOUGH the jurisdiction in every case of crime, the punishment of which involved the loss of life or limb, was possessed by the General Court, or that special creation, the court of Oyer and Terminer, nevertheless, there is reason to think that the punishment itself was carried into effect in the county where the criminal act was committed, and under the supervision of that county's officers; it will, therefore, not be inappropriate to consider the different forms of punishment for criminal offences at this point of our inquiry, even though the judgment was delivered by the General, and not by the County, Court, the subject now under discussion.

One of the most remarkable features of the administration of law in Virginia, during the Seventeenth century, was the leniency of the penalties imposed for numerous crimes as compared with the degree to which the same crimes were punished in the Mother Country. The excessive severity of the criminal jurisprudence of England throughout this whole period was only modified by commutation to transportation, in itself an unjustifiable cruelty when the offence was not of a heinous character. A very urgent problem in that age was how to rid the English parishes of numerous wrong-

doers, and the judges were, no doubt, pleased, as well from an economic as from a humanitarian point of view, to condemn to the foreign plantations persons guilty of the smaller crimes for which the law had declared death to be the penalty. It has been estimated that there were in those times three hundred offences punished by the gallows. Hard and unscrupulous as the age was, it must have been shocking to the sensibilities of most of the judges to deprive a man of life because he had killed another person's hare or stolen a sheep, especially when there was reason to think that the culprit had been pressed by want. Transportation was a compromise suggested by the conflict in the judges' minds between the impulse of duty, as prescribed by the existing criminal code, and the impulse of humanity, as dictated by their own hearts.

X In Virginia, on the other hand, the number of offences punished with death was comparatively small, and the penalties short of that extreme one were marked by great moderation. Several reasons independently of the requirements of the Charter of 1606<sup>1</sup> may be offered in explanation of this fact, which seems the more notable when the disposition of the colonists to adhere to the laws, customs, and regulations of the Mother Country is recalled. First, the whole tone of Virginian life was distinguished for greater kindness and leniency than were observed in the tone of the contemporary life of England. The secluded existence on the plantation encouraged, on the one hand, the spirit of individual freedom, but, on the other, the spirit of mutual depen-

<sup>1</sup> Only the most serious offences such as murder, mutiny, etc., were by the provisions of the Charter of 1606 punishable in the Colony with death. This is undoubtedly one explanation of the milder criminal code which prevailed in Virginia.

dence; and under this influence, men became less inclined to act with harshness in their relations with their fellows, busy like themselves in establishing homes in that remote part of the world. Secondly, it is doubtful whether class feeling entered into the enforcement of law to the same extent in the Colony as in the Mother Country, where a judge was, perhaps, more prone to unyielding sternness in dealing with persons belonging to the lower social orders than with those belonging to the higher. Thirdly, there was, perhaps, less stickling in Virginia for all kinds of personal rights than in England, owing, no doubt, to the conditions growing out of its comparatively recent settlement; especially was this the case with all rights of property, which were regarded in England as so sacred that interference with them was, in many cases, looked upon as justly exposing the culprit to the penalty of death. There was no aspect of the law's administration by the English judges so harsh as their determination to protect at any cost the right of property in the smallest and least valuable article.

In Virginia, on the other hand, where the necessities of life were produced in overflowing abundance,—where nearly every kind of domestic animal roamed like wild beasts in the forests,—where two thirds of the soil embraced in each plantation had not been denuded of the primeval woods,—and where a vast expanse of wilderness lay on the frontier ready for the axe, plough, and hoe of the settler,—in a community presenting such characteristics as these, the appropriation of the personal and even landed property of another was not likely to be placed on the footing of a capital crime. Killing a hare in a country where only a few persons cared to post their estates; or driving off a cow or a

pig, when the woods were overrun with hogs and wild cattle; or stealing food to eat or clothes to wear when the people were so ready to present either to whoever was in actual want; or trespassing on another's estate when the owner himself was not absolutely certain of his own boundaries,—none of these offences, serious as some of them were, assumed in the Virginians' minds that extraordinary heinousness which they had long assumed in Englishmen's in consequence of the more intense conservatism of the Mother Country, its more aristocratic institutions, its greater concentration of wealth and population, and the sharper struggle for existence going on in its communities.

Instead of adopting the harsh features of the English criminal law, as they might have done after the revocation of all the charters in 1624, the people of Virginia, during the Seventeenth century, set the English people an example which they were to follow only after one hundred and fifty years had passed.<sup>1</sup> It seems to have been thought by the Virginians that it was a poor use to make of an individual who, from our modern point of view, committed some small offence, either to destroy his life, or, in imitation of the English judges, to convey him out of the Colony. Even if they had decided to accept the pitiless English code, subject to the amelioration of transportation, where were they to send a person who had set a rick on fire, stolen a pig, or robbed an

<sup>1</sup> Lord Brampton, in his *Reminiscences*, has recorded that in 1836, when a boy, he saw a cart passing through the town of Bedford containing the "body of a youth of seventeen hanged that morning at Bedford Gaol for setting fire to a stack of corn." As late as this year, he states that "the punishment of death was inflicted for almost every offence of stealing which would now be thought sufficiently dealt with by a sentence of a week's imprisonment"; see p. 112, London Edition, 1904.

orchard? The Mother Country alone had the power to thrust its felons on the colonial communities. No colony would receive batches of convicts from other colonies under a system continued from year to year. Even if the conscience and common sense of the Virginian judges had not revolted against the English criminal code, there was no permanent opening for a compromise with their humaner feelings by commuting to transportation, although that form of punishment was not unknown as an occasional penalty for some crime, for which, under ordinary circumstances, death would have been inflicted.<sup>1</sup> All the influences of their situation united in causing the Virginians of the Seventeenth century to adopt a system of criminal law differing but little, in its temperate and rational spirit, from the one now in operation in all enlightened commonwealths. Not even the judges of England, however, were more scrupulous and rigid in enforcing the punishment of death as the penalty for the commission of those crimes which, from that age to this, have been regarded as striking the heaviest blows at the safety of the individual, and the peace of society. It was in the instance of the smaller crimes that the Virginians exhibited their practical wisdom by graduating the punishment to the real heinousness of the offence; and in showing this moderation, this just sense of proportion, they opened a new chapter in the history of criminal jurisprudence as original and unprecedented among English-speaking people as the system of recording land titles, which, as we have seen, was an

<sup>1</sup> Arthur Jarvis, who was suspected of burning the State House about 1698, was, in the course of that year, condemned to death for burglary and felony, but his sentence was commuted to transportation; see Minutes of Council, Oct. 28, 1698, B. T. Va., vol. liii.

equally radical departure from the custom prevailing in the Mother Country.

What were the different forms of punishment adopted in the Colony? The only kind of capital punishment inflicted in the civil, as distinguished from the military, administration of justice, was the gallows. During the time that Dale and Argoll were in control of affairs, there were, as we have seen, a number of military executions; but even in these instances, the rope was perhaps the principal instrument used in putting an end to the criminal. On March 12, 1658, Huntington Ayres was hanged in York county, and the circumstances attending his last days were probably such as were common to the last days of most of the convicted felons in those times:—he seems to have been heavily ironed during his imprisonment; and the shackles were only struck from his limbs a few minutes before he was led to the gallows.<sup>1</sup> The negro Tony, who was turned off in Henrico, in 1688, was hanged in the same manner. In neither case does there appear to have been a scaffold.<sup>2</sup> The execution of a criminal seems to have taken place on any day of the week; for instance, there exists

<sup>1</sup> The following is from the Northumberland County Records, Orders Aug. 6, 1659:

"Warrant to ye Sher. for the Execution of Geo. Caynscough. These are in the name of his Highness, the Lord Protector, to will, require, and command you that forthwith you cause Geo. Caynscough (being upon an indictment found guilty of the murder of John Cammill) to be hanged by the neck till his Body be dead. And for so doing, this shall be your sufficient warrant. Given under my hand this 6th day of August 1659.

"For ye Sheriff of Northumberland Signed JOHN TRUSSELL  
 "His Deputy or Deputies 8th of Augst. 1659 (Head of the Commons)"

<sup>2</sup> Henrico County Minute Book, 1682-1701, p. 198, Va. St. Libr. The expression used in this entry is "building a gallows," for which ten shillings were allowed.

the record of a hanging that occurred on Monday; of another, that occurred on Wednesday; and of a third, on Saturday.<sup>1</sup> The hour appointed for the event was generally chosen between eleven and twelve o'clock in the morning.<sup>2</sup>

The public hangman's office had as dubious and sinister a reputation in Virginia as in the Mother Country itself; its very forbidding character is shown by the fact that a man was not infrequently selected to serve in this rôle on a special occasion as a form of punishment for some offence which he had committed; for example, in 1653, William Gray, a boy only fourteen years of age, having been found guilty of incontinence with an orphan girl, was ordered to appear as the hangman at the gallows in Northampton.<sup>3</sup> As a rule, however, it seems to have been the sheriff's duty to execute all criminals condemned to die within the boundaries of his bailiwick; and for the performance of this revolting task, he was, by Act of Assembly, allowed five hundred pounds of tobacco.<sup>4</sup>

There seems to have been a professional hangman among the residents of Jamestown. This usually dismal officer appeared in a rather amusing light in 1677, perhaps the only occasion on which he ever did so. The Commissioners sent out to Virginia to inquire into the causes of the insurrection of the previous year had called at Green Spring, the home of Berkeley, whose bitter enmity they had incurred by their condemnation of his violent conduct in punishing the

<sup>1</sup> B. T. Va., vol. viii., Doct. 53; Northampton County Records, vol. 1689-98, p. 238.

<sup>2</sup> Northampton County Records, vol. 1689-98, p. 238.

<sup>3</sup> *Ibid.*, vol. 1651-54, p. 181.

<sup>4</sup> Acts of Assembly, 1677.



unfortunate followers of Bacon. When they left the house, the Governor's coach was waiting at the door ready to convey them to Jamestown. Apparently, they were to be the recipients of an attention worthy of their rank; after taking their seats within the vehicle, however, they observed, to their indignant horror, that their postilion was the common hangman. As they drove away, they saw Lady Berkeley peeping at them in evident derision through a broken quarrel of glass in the window of her chamber. The Commissioners, in reporting the insult to the English Government, declared, no doubt very justly, that "it looked more like a woman's than a man's malice"<sup>1</sup>; in other words, it was the lively Lady Berkeley who had brought this ignominy on the King's representatives, and not Sir William himself, although it may be taken for granted that Berkeley was not less pleased by the undignified position in which the Commissioners had been placed. The incident showed the depth of petty meanness to which the Governor and his wife had descended after his sense of vengeance had been glutted by the most shameful executions that have ever stained the annals of Virginia.

In February, 1676-7, Richard Haines, a servant of Bryan Smith, was set free by the General Assembly's order on condition that he should perform the duties of a "common hangman." His master received for him twenty-one hundred pounds of tobacco. Haines himself does not appear to have been paid any fee for an execution.<sup>2</sup>

<sup>1</sup> Letter of English Commissioners will be found in Winder Papers, Va. St. Libr.

<sup>2</sup> Orders of General Assembly Feby. 20, 1676-7, Colonial Entry Book, vol. lxxxvi. One entry gives the date on which Haines was

Some crimes, punished capitally in England, were punished in Virginia by fine and imprisonment alone. Such was the penalty imposed upon all persons convicted of counterfeiting, an offence not regarded in the Colony as of extraordinary heinousness, as its consequences, owing to the general use of tobacco as money, were not so serious as in England. Had the only currency employed in Virginia consisted of gold, silver, and copper, counterfeiting would have assumed a darker complexion as tending to vitiate the only medium of exchange; tobacco, however, was in such universal demand as money that there was hardly any call even for the little coin to be found in the Colony. This coin was almost entirely of a foreign origin, and passed at such a heavy discount that its use was hampered by the confused popular conception as to its real worth. The people's preference was always for tobacco because they had a perfectly accurate idea as to its value, since its market price was known from year to year. The fine imposed for counterfeiting was fifteen pounds sterling, ten of which was to be paid to the King, and five to the informer; and the informer was also to receive twenty shillings, in order to make good all the charges incurred by him in prosecuting the culprit.<sup>1</sup>

A simple fine was also the penalty provided for different kinds of petty thieving. There were a great number of orchards in the Colony which bore in the most extraordinary abundance; to punish with uncommon severity anyone detected in stealing apples, peaches, and the like,—fruits used with lavishness in

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set free as "Febr'y 20 in the 29th year of Charles II. Reign." By order of Assembly, Haines was "admitted common hangman of the country."

<sup>1</sup> Robinson Transcripts, p. 15.

feeding hogs to prevent waste,—would have seemed to the Virginians of those times as an act of excessive cruelty, especially when bushels of these fruits would have been cheerfully given away for the mere asking. In 1652, William Stirling and Joseph Harrison, having been arrested for robbing Colonel Stone's orchard, situated in Northampton county, implored forgiveness "in an humble, submissive way"; and on their promising never again to repeat the same act, were discharged. Had they been guilty of this offence in England, they would, very probably, have thought that they were escaping easily in being sentenced only to transportation; in Virginia, on the other hand, they were subjected simply to a fine of one hundred and fifty pounds of tobacco; and were thus practically made to pay for the fruit they had taken, since one half of this rather inconsiderable amount went to Colonel Stone, and the other half to the county, no doubt to meet the charges of the prosecution.<sup>1</sup>

<sup>1</sup> Northampton County Records, vol. 1651-54, folio p. 139.

## CHAPTER XV

### County Court: Punishments for Crime (*Continued*)

**O**F far more frequent occurrence than even the fine as a form of punishment for criminal offences was the lash, which perhaps was, in general, only used on those persons who were too poor to evade it by the payment of a prescribed sum in tobacco. The lash was probably very much favored because it saved the county all the expense of feeding and guarding a prisoner. The strokes being inflicted in a few minutes, the only charge attendant was the fee which the sheriff or constable could claim for carrying out the court's order in applying the whip. In 1626, the sin of fornication was punished in this manner. Sometimes one of the parties to the act was condemned to the whipping post, while the other was required to appear in the midst of the congregation of the parish church, during religious services, enveloped in a white sheet.<sup>1</sup> In Northampton, in 1654, the punishment for adultery consisted of twenty strokes.

All persons guilty of gross impudence to their superiors in these early times were also compelled to submit to the smart of the whip. In 1637, a servant of

<sup>1</sup> General Court Orders, Janry. 13, 1626, Robinson Transcripts, p. 62.

Mr. Matthew Phillips complained of his master in court in language so licentious (for which he was unable to show the smallest ground of justification) that the justices ordered the sheriff to give him twenty lashes, a treatment very well calculated to put a check on an over-free tongue. Nor was this punishment confined to male servants, for, in the same county, a woman who had been impertinent to Colonel Adam Thoroughgood was forced to bare her back to the same number of strokes.<sup>1</sup> Thomas Parks, having in the like bold manner, and equally without good reason, been abusive to the grand jury of Northampton, was sentenced, in 1645, to receive thirty lashes on his naked shoulders.<sup>2</sup>

The same brief but painful punishment was often adjudged in the case of slander. In 1641, Anne Gaskin, of Lower Norfolk, having vilified Mrs. Foster, was commanded by the justices to beg that lady's forgiveness in the presence of the congregation in Lynnhaven church on an appointed Sunday; but she positively refused, not only to do this, but also, when summoned, to appear before the court to answer for her contemptuous act. In consequence, the sheriff was instructed to take her into custody, and having carried her to Captain Thomas Willoughby's, to strike her with a whip until she had received twenty lashes; if she still refused to ask Mrs. Foster's pardon, she was then to be carried to Captain Henry Sewell's, and there forced to submit to thirty lashes more; and if she refused again to beg forgiveness, she was to be carried to Captain John Sibsey's, and there whipped until she had received forty lashes; and if after all these repeated punishments, she remained contumacious, she was, on

<sup>1</sup> Lower Norfolk County Records, Orders May 15, 1637.

<sup>2</sup> Northampton County Records, Orders Janry. 28, 1645.

every Monday, until she yielded, to receive fifty strokes of the whip well laid on.<sup>1</sup> In this case, the original wrong was, in the justices' view no doubt, greatly aggravated by the fact that the victim of the slander was a lady supposed, by her social position, to be entitled to special consideration; but we find again and again in this county, as well as in others, that the same penalty was imposed for the like offence.

Any person who had been guilty of enticing the servant of another to run away—a very serious wrong in that age, particularly at the season of the year when the crops were in the ground—was sentenced to receive thirty lashes.<sup>2</sup> This was the penalty imposed for picking a pocket,<sup>3</sup> as well as for other forms of petit larceny. An order was adopted by the court of Lower Norfolk in 1643 that every attempt to carry off a boat,—an unusually grave offence in that part of the Colony,—should, whether successful or not, be punished by thirty strokes of the whip well laid on the bare back; and whoever was convicted of a theft of powder and shot was to suffer for it in the like manner.<sup>4</sup> About 1666, a woman residing in the same county was condemned to twenty lashes because she had been detected in stealing two smocks<sup>5</sup>; and such was also the punishment to which Mary Bunton, of Accomac, was, in 1680, forced to submit for filching a handkerchief, a pillowbier, and a hood and towel.<sup>6</sup> William Lonegan, of Elizabeth City county, escaped much more easily for a more serious

<sup>1</sup> Lower Norfolk County Records, Orders Nov. 15, 1641.

<sup>2</sup> *Ibid.*, Orders May 15, 1643.

<sup>3</sup> General Court Orders, October, 1670, Robinson Transcripts.

<sup>4</sup> Lower Norfolk County Records, Orders May 15, 1643.

<sup>5</sup> *Ibid.*, vol. 1666-75, p. 14.

<sup>6</sup> Accomac County Records, vol. 1678-82, p. 181.

offence:—having robbed Thomas Batts of a neckcloth and silk hat, a pair of silver buckles and a tobacco box, he was sentenced by the court to receive only six lashes; but was ordered to return the articles and to pay all the expenses of his prosecution. It is probable that there were extenuating circumstances to explain the extraordinary leniency shown in this case.<sup>1</sup>

When there were several persons involved in a theft, a vicarious punishment was sometimes inflicted as a matter of public policy. For instance, in 1684, a citizen of Lower Norfolk having been robbed by three sailors of a large number of valuable poultry, and the culprits having been brought up before court, the judges decided that, as it would be detrimental to the commander of the ship to be hindered in his voyage, the guilty seamen should be allowed to cast lots as to which of the three should receive the twenty lashes imposed by way of penalty. It did not seem to occur to the judges that it would have been more equitable to subject each culprit to a third of the lashes instead of one culprit to the entire twenty; but it is possible that the strokes were expected to disable for a time at least, and one crippled seaman was all the ship could afford to suffer to lie by when it was on the point of sailing.<sup>2</sup>

The number of lashes to which a culprit was sentenced was sometimes not administered on one occasion, but was divided up between several. John Riffin was, in 1686, condemned in Accomac to receive thirty strokes of the whip, ten to be inflicted at the county-prison, ten at a second place specially chosen, and ten at a third; he was then to be carried into Maryland, where he was

<sup>1</sup> Elizabeth City County Records, Orders Nov. 18, 1695.

<sup>2</sup> Lower Norfolk County Records, vol. 1675-86, p. 170.

to be delivered to his master with a strict injunction that, should he again fly to Virginia, he should receive thirty lashes more.<sup>1</sup> This man had not only run away from his master, but had also been guilty of theft, to which he had, perhaps, been forced by hunger.

In several instances, occurring in the Seventeenth century, men were sentenced to the lash who, even in our more lenient age, would have been condemned to death. In these instances, however, the criminals were either servants or slaves, whose labor was so valuable that the court, perhaps on that account, was led to moderate their severity. For example, in 1679, Thomas Jones, bound out, under articles of indenture, to a woman residing in Accomac, seized his mistress, when unprotected, by the throat, and attempted to ravish her; but in spite of the aggravated circumstances marking his conduct, the justices condemned him simply to receive thirty-nine strokes of the whip, and to wear an iron collar for an indefinite period.<sup>2</sup> A more notable case yet was that of Sam, a negro belonging to Mr. Richard Metcalf, of Westmoreland county. This man had, on several occasions, been detected in promoting an insurrection of the slaves. Having been tried by the General Court sitting at Jamestown, he was, by that body, sentenced to be "whipt at the cart's tayle from the prison round about the towne, and thence to the gallows, and from thence to the prison again." He was afterwards to be conveyed to Westmoreland, where, at the following term of the county court, he was to be flogged with great severity; an iron collar was then to be placed

<sup>1</sup> Accomac County Records, vol. 1682-97, p. 93.

<sup>2</sup> *Ibid.*, vol. 1678-82, p. 89.



around his neck, which, during the remainder of his life, he was not to be permitted to discard, under penalty of suffering death; and the punishment of death was also to be inflicted, should he venture to leave his master's plantation.<sup>1</sup>

The whipping adjudged by the court was generally done by the constable or his assistant, but if the culprit was a servant, it was often done by the master; an instance of which occurred in 1690, when William Colston, as previously ordered, produced Elizabeth Griffin at a meeting of the justices, and, in their presence, gave her twenty-one lashes.<sup>2</sup> A whipping-post was, at the public charge, erected near every prison and court-house in the Colony, for use, not only when a condemned person was to be flogged, but also when he was to be merely exposed to the public gaze. A man who, in 1692, had been convicted of filling a hogs-head with the sweepings from the floor of a tobacco house, was sentenced by the county court of Essex to be fastened to the public whipping-post, and in that plight to remain there for the space of half an hour.<sup>3</sup> Somewhat similar to this form of punishment was the one inflicted, in the early years of the Colony's history, on every soldier who had, on four different occasions, been guilty of profanity:—he was required to ride the wooden horse, with a musket tied to each foot for a weight. To be compelled to lie neck and heels was another form of punishment adopted in the case of numerous offences. It was very frequently the penalty for incontinence. John Holloway, of Accomac, was, in 1634, sentenced to lie in this manner at the door of

<sup>1</sup> Westmoreland County Records, vol. 1675-88, p. 644.

<sup>2</sup> Rappahannock County Records, vol. 1686-92, orig. p. 267.

<sup>3</sup> Essex County Records, Orders June 10, 1692.

the parish church when the worshippers should assemble because he had failed to appear at court when summoned to answer complaints made against him.<sup>1</sup> A few years later, William Johnson, of Northampton, having borne himself "very peremptorily" towards the justices, was condemned to undergo for two hours the same ignominious punishment.<sup>2</sup>

One of the most ordinary forms of punishment inflicted in Virginia during the Seventeenth century was to sentence a culprit to sit in the stocks. As early as 1637, an order was entered by the county court of Accomac requiring John Foorth to erect a pair: on his failing to carry out this order, he was fined one hundred pounds of tobacco; but not content with this, the court informed him, that, should he neglect to build a pair of stocks for the public use before they again assembled, they would commit him to the old pair for so long a time as the commander of the county should specify.<sup>3</sup> Foorth had probably been guilty of some offence which he was permitted to expiate by the erection of a new pair. This was frequently the penalty for bringing a slanderous charge; for violating the decorum of the court-room by swearing; or for committing an assault.<sup>4</sup> As the stocks had to be made of heavy and enduring timber, their cost was not inconsiderable; in 1656, the expense of building a new whipping-post and a new pair of stocks in Lancaster was estimated at four

<sup>1</sup> A case of incontinence so punished is entered in Accomac County Records, vol. 1634-40, p. 20, Va. St. Libr. For Holloway case, see Accomac County Records, vol. 1632-34, p. 24, Va. St. Libr.

<sup>2</sup> Northampton County Records, Orders Oct. 30, 1643.

<sup>3</sup> Accomac County Records, Orders July 3, 1637.

<sup>4</sup> Lower Norfolk County Records, Orders April 2, 1638; also vol. 1656-66, p. 256; Henrico County Minute Book, vol. 1682-1701, p. 303, Va. St. Libr.; Essex County Records, Orders May 10, 1697.

hundred pounds of tobacco, the larger part of which was perhaps needed to meet the charge for the latter.<sup>1</sup> Several years afterwards, two hundred pounds of tobacco were allowed in the Westmoreland levy for the erection of a pair of stocks in that county; and they were required to be constructed of locust, a wood remarkable for its lasting qualities even when exposed to the destructive influence of violent changes of weather.<sup>2</sup>

The order for the erection of a new pair of stocks was very generally accompanied by an order for the erection of a new pillory. The stocks, pillory, and whipping post, no doubt, stood very near together. An Act of Assembly passed in March, 1661-2, required that these three ancient instruments of punishment should be built in close proximity to every court-house in the Colony<sup>3</sup>; the pillory, in fact, was sometimes joined on to the outer wall of the court-house itself.<sup>4</sup> A failure to comply with the Assembly's regulations subjected a county to a heavy fine; and in 1664, such a fine was actually imposed on the authorities of Surry.<sup>5</sup> The cost of erecting these three instruments was, in 1679, estimated at one thousand and thirty-nine pounds of tobacco.<sup>6</sup> In 1683, the justices of Rappahannock gave the sheriff orders to set a certain offender in the pillory "fast by the neck"; occasionally, when thus placed, the criminal's ear was nailed to the post, and he was not released until that member had been

<sup>1</sup> Lancaster County Records, vol. 1652-56, p. 301.

<sup>2</sup> Westmoreland County Records, Orders for November, 1658.

<sup>3</sup> Hening's *Statutes*, vol. ii., p. 75.

<sup>4</sup> York County Records, vol. 1657-62, p. 313, Va. St. Libr.

<sup>5</sup> General Court, Orders 1664, Robinson Transcripts, p. 250.

<sup>6</sup> Henrico County Records, vol. 1677-92, orig. p. 116.

severed from his head; but this was generally done only in the case of a slave who had shown an incorrigible disposition to run away, for such mutilation served as a public advertisement, should he afterwards be found wandering far from his master's plantation.<sup>1</sup>

Ducking seems to have been used as a means of punishment so early as 1626, for, in the course of that year, the General Court sentenced Margaret Jones, detected in adultery, to be dragged at a boat's stern in James River from the shore to a vessel riding in the stream, and from the vessel back to the shore.<sup>2</sup> The year afterwards, the wife of Christopher Hall, whose home was situated at Archer's Hope, was condemned to be "trayled" around the ship *Margaret and John*, and then soused under water three times, because she was in the habit of creating a great disturbance among her neighbors by her vociferous scoldings and railings.<sup>3</sup> Ducking appears to have been used in 1634 as a punishment in the alternative; for instance, a woman residing in Accomac, who had applied a shameful epithet to another woman, was ordered by the court to acknowledge her guilt in the parish church on Sunday in the presence of the whole congregation; and should she refuse to obey, she was to be drawn across King's Creek at the stern of a canoe.<sup>4</sup> A few years later, Anne Winson and Anne Stephens, of the same county, were sentenced to be immersed because they had uttered

<sup>1</sup> For instances of offenders sentenced to the pillory, see Rappahannock County Records, Orders March 5, 1683-4, Lower Norfolk County Records, vol. 1656-66, p. 356<sup>2</sup>, Lancaster County Records, Orders July 14, 1680. For mutilation of slaves, see Middlesex County Records, vol. 1694-1703, p. 340.

<sup>2</sup> General Court Orders, 1626, Robinson Transcripts, p. 53.

<sup>3</sup> *Ibid.*, 1627, Robinson Transcripts, p. 67.

<sup>4</sup> Accomac County Records, vol. 1634-40, p. 20, Va. St. Libr.

"most vyle and scandalous speeches" to the discredit of John Waltham and his wife.<sup>1</sup> Henry Rankin, of Northampton, having, in 1658, committed some offence which had brought him into the law's clutches, was punished by being compelled to pay the cost of a ducking stool to be set up at a convenient spot.<sup>2</sup> Acts of Assembly, passed in 1660 and 1662, however, made it obligatory upon the justices of every county to provide for the erection, at the public expense, of a stool of this kind, to be used more especially for the punishment of women of slanderous and brawling tongues.<sup>3</sup> It was, doubtless, in accord with these Acts that such a stool was, in 1662, set up in York near Captain Wormeley's landing; and, in 1663, in Westmoreland.<sup>4</sup> As late as 1697, a ducking stool was provided for each of the two parishes lying in the latter county, one of which was placed at the milldam situated on Colonel Laurence Washington's plantation, and the other at the milldam situated on the plantation of Colonel Isaac Allerton.<sup>5</sup> The ducking stool in Henrico was erected at the courthouse.<sup>6</sup>

Several offences of the general nature of slander were punished by simply requiring the culprit to kneel in the presence of the judges of the county court, and in that humiliating attitude to ask forgiveness of the persons whom he had wronged. A female neighbor of Captain Adam Thoroughgood, for speaking of him as a man

<sup>1</sup> Accomac County Records, vol. 1632-40, p. 84, Va. St. Libr.

<sup>2</sup> Northampton County Records, vol. 1657-64, folio p. 37.

<sup>3</sup> Hening's *Statutes*, vol. ii., p. 75; Colonial Entry Book, vol. 1661-84, Acts of 1660; also of 1662.

<sup>4</sup> York County Records, vol. 1657-62, p. 475, Va. St. Libr.; Public Levy, Oct. 28, 1663, Westmoreland County Records.

<sup>5</sup> Westmoreland County Records, Orders May 26, 1697.

<sup>6</sup> Henrico County Minute Book, 1682-1701, p. 111, Va. St. Libr.

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devoid of all desire to pay a bill, was sentenced to sue for pardon in the court of Lower Norfolk while the justices were in session.<sup>1</sup> A similar expiation was exacted, in 1643, of William Evans for abusing the wife of John Custis, a citizen of Accomac; and in addition, he was condemned to deliver to Custis two barrels of corn.<sup>2</sup> It very frequently occurred that the culprit, if a woman, declined to kneel after she had been brought to the bar; the wife of Thomas Wardley, of York county, went so far, in 1671, as to say that, rather than beg Colonel Beale's pardon in such a posture, she would submit to a lashing at the whipping-post.<sup>3</sup> The husbands very often sustained their wives in this obduracy; when Mrs. John Williams, in 1654, was ordered by the justices of Northampton to appear at court for the purpose of publicly asking forgiveness, her husband exclaimed that she should be hanged before she should be made to go down on her knees, "without it bee to God."<sup>4</sup> Sometimes, a second form of punishment had to be gone through after the scene in the court-room; for instance, James Markham, of Lancaster, for slandering Cuthbert Potter, was sentenced to humiliate himself, not only by bending his knee before the justices, but also by standing at the court-house door during the whole course of each of three successive terms with a placard attached to his breast stating the nature of his offence, and expressing his hearty penitence for having committed it.<sup>5</sup>

<sup>1</sup> Lower Norfolk County Records, Orders Aug. 3, 1640; see also Orders July 17, 1643.

<sup>2</sup> Accomac County Records, vol. 1640-45, p. 88, Va. St. Libr.

<sup>3</sup> York County Records, vol. 1664-72, p. 501, Va. St. Libr.

<sup>4</sup> Northampton County Records, vol. 1654-55, folio p. 15.

<sup>5</sup> Lancaster County Records, vol. 1656-66, p. 120.

In several instances, persons, charged with some form of treason, but afterwards made the objects of the King's clemency, were permitted to go free on condition of their asking forgiveness in court. In 1677, Arthur Long, of Surry, who had been deeply implicated in the insurrection of the previous year, was called before the justices of that county, and with a rope around his neck, and on his bended knees, having first declared "his sincere repentence of his rebellion," implored the pardon of God, the King, the Governor, the Council, and the other magistrates of the Colony.<sup>1</sup> The same punishment was adjudged for Colonel Robert Beverley, who was supposed to have given active encouragement to the designs of the Plant-cutters in 1682.<sup>2</sup>

<sup>1</sup> Surry County Records, vol. 1671-84, p. 201, Va. St. Libr.

<sup>2</sup> Colonial Entry Book, vol. 1680-95, p. 187.

## CHAPTER XVI

### County Court: The Prisons

THE General Assembly, at an early date, adopted ample provisions for the erection of jails. In 1642-3, when the counties had been laid off and their seats chosen, their justices were impowered to make the necessary arrangements for the construction of such buildings; and in order to impel them the more strongly to the undertaking, the General Assembly declared that, should a criminal escape from a sheriff for lack of a prison in which to confine him, the county should be held liable at that officer's suit. The sheriffs at this time were required to report at Jamestown the total amount of their various disbursements on the score of the jails situated in their respective counties, and these expenses were to be included in the assessments of the public levies.<sup>1</sup> It is probable that the General Assembly had principally in view the cost of guarding and supporting prisoners who were to be tried in the General Court. The accused, by a law passed some years later, were ordered to be kept in the jails of the different counties until the first day of the next term of that court at Jamestown should arrive<sup>2</sup>; and this doubtless was merely a re-enactment of a statute which had been in operation for some time.

<sup>1</sup> Hening's *Statutes*, vol. i., p. 265.

<sup>2</sup> *Ibid.*, p. 444.



The Colony, owing to the low price of its only staple, tobacco, having, about 1647, fallen into a state of great poverty, the General Assembly was led to modify its former regulations as to what should be considered a "sufficient prison," so as to diminish the onerous charge for erecting such a building. By the first order adopted, a certain amount of iron work had been required to enter into its construction, but such material could now be obtained only with great difficulty and at heavy expense. The General Assembly, having first declared that, in consequence of all these conditions, only such dwellings as the people usually occupied could be conveniently raised to serve as prisons, enacted that any structure built in the "form of the Virginia houses" should be accepted as a sufficient jail, provided that the only way a criminal could escape from it would be by breaking through some part of it. All prisoners who should force their way out were to be looked upon as having committed a felony.<sup>1</sup>

The expense of building prisons seems to have led, on the part of some of the counties, to great delay in complying with the General Assembly's order; and, in consequence, that body, in 1657-8, found it necessary to renew its former provision on this point, which was also designed to remind all the newly formed counties of what was required of them; again, it was enacted that, if a prisoner escaped because there was no jail in the county where he was arrested, then the sheriff was to be impowered to recover damages from the justices on account of their neglect.<sup>2</sup> And for the third time, the General Assembly felt compelled to renew the same provision:—in 1661-2, the justices of every county

<sup>1</sup> Henning's *Statutes*, vol. i., p. 340.

<sup>2</sup> *Ibid.*, pp. 444, 460.

lacking a prison were commanded to take immediate steps to have one built, and if constructed after the form of the ordinary "Virginia house," it was to be considered to be of sufficient size and strength.<sup>1</sup>

In spite of this extraordinary care to assure proper buildings for jails throughout the Colony, Culpeper was, during his Governorship, able to report, with what was perhaps a fair degree of truth, that there was none in Virginia which could not be "easily broken."<sup>2</sup> Writing of the persons seized as rebels for their participation in the Plant-cutters' acts in 1682, he declared about this time that he "would count it a miracle" if they did not find a way out of the fragile prisons. "I am sure," he adds, "I was in paine all the while, and could scarcely sleep for feare thereof." His apprehensions were justified, for while the guards of the jail at Jamestown were gone to supper, James Haley, one of the prisoners, broke through the wall of the building, and, though loaded down with irons, made good his escape.<sup>3</sup> It was probably due to Culpeper's urgent remonstrance that the General Assembly in 1684 for the fourth time required the justices to see that a strong and substantial jail, constructed in the form of a "Virginia house," was built in their respective counties, should not one be already standing. This law provided for a very humane addition to each jail:—a parcel of land, not to exceed eighty poles square, was to be laid off immediately adjoining it to serve as "a place of liberty and privilege" for every prisoner, not committed for treason or felony, who would give bond to the sheriff that he would not

<sup>1</sup> Hening's *Statutes*, vol. ii., p. 76.

<sup>2</sup> Colonial Entry Book, vol. 1681-5, p. 159.

<sup>3</sup> Culpeper's Report, 1683, *Va. Maga. of Hist. and Biog.*, vol. iii., p. 231; York County Records, vol. 1675-84, orig. p. 511.

leave its bounds, and would use it for the promotion of his health and refreshment alone.<sup>1</sup> By the beginning of the tenth decade of the century, each county apparently was in possession of a moderately secure jail, for when, in 1693, a proposition came up to erect a series of bridewells throughout the Colony, the House of Burgesses declined to adopt it, on the ground that such buildings had already been provided by law.<sup>2</sup>

The records show that every county formed during the Seventeenth century made a determined attempt at one time or another to erect a suitable prison. Let us begin with James City, which contained, not only one for the accommodation of its own criminals, but also one for the safe keeping of all those delivered by the sheriffs of the Colony to the sheriff at Jamestown for trial by the judges of the General Court. A jail was built at that place at a very early date. A vivid, but quite probably an over-colored picture of this jail's condition in 1662 is presented in a letter written, that year, by George Wilson, a Quaker, who had spent some time within its walls, condemned thereto for his religious zeal. He describes it as a "dirty dungeon . . . a nasty stinking prison . . . where we have not so much as air to blow in at a window, but close made up with brick and lime." Wilson, like others before and after him who suffered for opinion's sake, was led, perhaps unconsciously, to give some rein to the spirit of exaggeration in order to make his martyrdom appear the more glorious in the eyes of his companions and followers.<sup>3</sup> There is no other record to confirm his account of this jail; if

<sup>1</sup> Hening's *Statutes*, vol. iii., p. 15.

<sup>2</sup> Minutes of Assembly, Oct. 14, 1693, Colonial Entry Book, vol. 1682-95.

<sup>3</sup> Neill's *Virginia Carolorum*, p. 285.

strictly accurate, it would show that the Black Hole of Calcutta had had its counterpart in Virginia. A few years later, the county was using as a prison one of the brick houses erected at Jamestown by the different counties by the Assembly's order<sup>1</sup>; and it is possible that this was the building which Wilson had been incarcerated in, and which he had represented to be in such a deplorable state. It must have remained the common jail until the town was destroyed in the conflagration of 1676 when held by Bacon and his troops. Only a few years after that event, Philip Ludwell petitioned the Assembly to allow him to rent for a period to cover half a century "the two houses in James City then lying in ruins," one of which was "the house where the jail was kept."<sup>2</sup> This request seems to have been at once granted.

Four years afterwards, a resolution was offered in the House of Burgesses calling for the erection at Jamestown of a "strong and substantial" prison, to be paid for out of the fund accruing from the tax on liquors; and that such a prison was urgently needed was shown by Haley's success, though heavily ironed, in breaking through the walls of the one in use at this time. The Governor and Council strongly opposed this money's diversion to such a purpose, but the Burgesses seem to have been firm in declining to raise in any other way the sum required for its construction.<sup>3</sup> The deadlock appears to have continued, for, as late as 1692-3, there was no public jail situated at Jamestown; in the course of that year, criminals brought up for trial before the

<sup>1</sup> Orders of Assembly, Sept. 17, 1668, Colonial Entry Book, vol. lxxxvi.

<sup>2</sup> *Ibid.*, 1680-1, Colonial Entry Book, vol. lxxxvi.

<sup>3</sup> Minutes of Assembly, Oct. 18, 1685, Colonial Entry Book, 1682-95, p. 293.

judges of the General Court were incarcerated in the county jail; but the House of Burgesses refused to make any appropriation in return for such a use of the building, although requested to do so by the members of the Assembly representing James City county.<sup>1</sup>

A prison had been erected in York county as early as 1646. It was evidently built of wood, as the justices are soon found employing a carpenter to mend the weather boarding where showing signs of decay; and also to daub portions of the outer walls with mud. This jail was probably constructed of heavy rough hewn logs, afterwards covered with planks, at least in part, and where left exposed filled in with the rudest kind of natural plaster.<sup>2</sup> In 1670, the prison then in use was pronounced by the county court to be inadequate for its purpose as well as inconveniently situated; and the justices at once proceeded to purchase of Major Robert Baldry, for one thousand pounds of tobacco, a half acre of land to furnish the site for a new jail. Baldry himself entered into a contract with them to construct the building<sup>3</sup>; but the undertaking probably ended in failure at this time, or the prison, if erected, was either destroyed or proved insufficient; for, six years later, an allowance of thirty-five hundred pounds of tobacco was made in the levy as Mr. Whitaker's remuneration for building a new jail according to specifications agreed upon beforehand.<sup>4</sup>

In 1683, the jail at that time standing in Henrico

<sup>1</sup> Minutes of Assembly, March 24, 1692, Colonial Entry Book, 1682-95.

<sup>2</sup> York County Records, vol. 1638-48, p. 166, Va. St. Libr.

<sup>3</sup> *Ibid.*, vol. 1664-92, p. 410, Va. St. Libr.

<sup>4</sup> *Ibid.*, vol. 1675-84, orig. p. 258.

having been pronounced insufficient for the safe confinement of anyone committed to it, Captain Thomas Cocke was impowered by the court to undertake the building of a new one. The contract with him provided that the proposed structure should be fifteen feet square, the floor laid with stout plank, the ceiling lined with cedar, and the roof covered with shingles. There was to be but a single chimney, which was to be placed on the outside of the house. Cocke was to receive one thousand pounds of tobacco, and all the materials taken out of the old prison, as his remuneration for erecting the new.<sup>1</sup> This new jail was completed by 1685, for, in the course of that year, the county court appointed William Glover and William Farrar to lay off a certain area of ground adjacent to it to afford the prisoners the space within which to walk and refresh themselves.<sup>2</sup> The building could hardly have been very strong, as, in the year of its construction, Humphrey Chamberlaine was only prevented by the guard from escaping through a hole he had been able to make in the walls. Thomas Holmes was more fortunate, for he not only broke through without being stopped, but also got away from the county.<sup>3</sup> In 1691, Thomas Chamberlaine, who had been committed to the prison until he should give bond for his good behavior, tore away several boards from the inside, and was only observed when he was about to step out. Thrust back, he succeeded in breaking out the second time, and returned to his home.<sup>4</sup>

Apparently, no prison had been erected in Lower Nor-

<sup>1</sup> Henrico County Minute Book, 1682-1701, p. 54, Va. St. Libr.

<sup>2</sup> *Ibid.*, p. 123, Va. St. Libr.

<sup>3</sup> *Ibid.*, 1682-1701, p. 108, Va. St. Libr.

<sup>4</sup> *Ibid.*, 1682-1701, p. 341, Va. St. Libr.

folk previous to 1646, for, during that year, the justices of the county court made an arrangement with a private citizen, at whose house they were in the habit of meeting, that this house should also be used as a jail.<sup>1</sup> In 1648, Richard Conquest, the sheriff, received nine hundred pounds of tobacco as remuneration for providing a prison during a period of twelve months<sup>2</sup>; how this was done is perhaps illustrated in an instance occurring in the same county at a subsequent date:—a man charged with a serious crime was delivered, heavily ironed, to the sheriff, and by him kept in that condition in custody at his residence until carried off to Jamestown for trial.<sup>3</sup> No prison had been built in Lower Norfolk as late as 1656, for, during that year, a small room in Thomas Edmonds's dwelling house was, by order of court, reserved as the substitute for a jail until a more convenient place had been chosen. The justices were probably led to enter this order by the fact that they held their sessions in this house occasionally.<sup>4</sup> A man named Prescott was appointed keeper in the absence of a regular gaoler; and it was arranged that he should receive as his remuneration seven hundred pounds of tobacco annually, and also whatever incidental fees belonged to the office.<sup>5</sup>

It was not until 1662 that the Lower Norfolk court seems to have taken very decided steps to erect a prison; this was really done in accord with the provisions of the Act of Assembly passed that year and

<sup>1</sup> Lower Norfolk County Records, Orders May 20, 1646.

<sup>2</sup> *Ibid.*, vol. 1646-51, p. 92.

<sup>3</sup> *Ibid.*, p. 123.

<sup>4</sup> *Ibid.*, vol. 1656-66, pp. 46, 47.

<sup>5</sup> *Ibid.*, pp. 54, 55.

applicable to all the counties; a leading citizen was now authorized to build a jail, and set up a pillory, whipping-post, a pair of stocks, and a ducking stool.<sup>1</sup> Either this jail or a second one was finished by 1669, for, during that year, Captain Carver was allowed a considerable sum in the levy for iron work furnished by him for the new structure.<sup>2</sup> In the course of 1691, the justices determined to erect in a lot situated within the bounds of the new town to be laid off on Elizabeth River, a prison, which, in its dimensions, and in the character of the material to enter into it, should be thoroughly well fitted for the purposes it would be designed to subserve.<sup>3</sup> In the following year, the justices of Princess Anne county, very recently formed, provided for the construction of a jail fifteen feet square and to be built of stout logs.<sup>4</sup>

An order was adopted in 1678 by the justices of Middlesex for the erection of a prison in that county. The contract for building it was undertaken by Richard Robinson and John Vaus, who seem to have been enjoined simply to make it "strong and firm." The material entering into it was apparently to be altogether of wood.<sup>5</sup> In the neighboring county of Lancaster, which formerly included Middlesex, there was, as late as 1664, no regular jail; in that year, Mr. Therriott, who had charge of the court-house, which he used partly as a tavern, was allowed fifteen hundred pounds of tobacco for providing what seems to have been one of his own houses to serve as a prison. It is possible,

<sup>1</sup> Lower Norfolk County Records, vol. 1656-66, p. 356<sup>2</sup>.

<sup>2</sup> *Ibid.*, vol. 1666-75, p. 42<sup>2</sup>.

<sup>3</sup> *Ibid.*, Orders June 17, 1691.

<sup>4</sup> Princess Anne County Records, vol. 1691-1709, p. 43.

<sup>5</sup> Middlesex County Records, Orders Nov. 4, 1678.



however, that the justices had by this time seen to the purchase of some sort of a building in accord with the Act of Assembly adopted in 1662. Many years later, we find William Therriott, who was probably a son of the tavern keeper of 1664, entering into a contract with the county court to erect for the public use a jail which should be twenty feet in length and fifteen in width; the roof to be double raftered; and the chimney to be placed against the outer and not against the inner wall.<sup>1</sup>

George Taylor, in 1685, signed an agreement with the court of Rappahannock to build on the north side of the River, on land owned by the county, and very near the court-house, a prison which was to have a width of fifteen feet and a length of twenty, with a door seven and a half feet in height. The whole structure was to be studded around "with strong studs" situated at a distance of six inches, the one from the other. The undertaker was, with the single exception of the lock for the door, to provide all the materials of different kinds needed for its completion; and he was also to be at liberty to procure timber from the woods growing on the court-house tract. By way of remuneration, he was to receive six thousand pounds of tobacco.<sup>2</sup> The prison to be built on the south side of the River was to be placed at Hobb's Hole, which had been selected as the site of the town ordered by a recent Act of Assembly to be laid off in that half of the county. This prison was to be a precise counterpart of the one to be erected on the north side, and Thomas Monday became the under-

<sup>1</sup> Lancaster County Records, Orders Sept. 14, 1664, July 14, 1680.

<sup>2</sup> Rappahannock County Records, Orders May 7, 1685.

taker for its construction. It would appear, however, that the contract for this second jail was not given out until 1691.<sup>1</sup>

During the following year, the court of Richmond county took the necessary steps for the construction of a new prison on the land lately acquired from James Orchard. Orchard contracted to erect the new jail as well as the new court-house. The two were to be placed not far apart. This was not the first prison to be built in this county; an older one, as well as an older court-house had, as we have already mentioned, formerly stood on a neck of land which had been found to be very inconveniently situated.<sup>2</sup> There seems to have been no regular jail in use in Westmoreland in 1685, for, during that year, the keeper of a well-known tavern was ordered by the court to take charge of all prisoners.<sup>3</sup>

A tavern seems to have been the substitute for a jail in Northampton as early as 1645.<sup>4</sup> Nearly two decades later, the county prison consisted of a house, known as the "new store," belonging to Captain Wm. Jones, and standing very near the site of his residence; and for its use, the court had allowed him six hundred pounds of tobacco from year to year.<sup>5</sup> A change was apparently made before the end of 1664, since a part of the court-house was then serving the purpose of a jail; but there was no permanent custodian chosen to prevent the prisoners' escape; the sheriff himself was held responsible for their safe keeping; and in order to

<sup>1</sup> Rappahannock County Records, Orders Nov. 5, 1691.

<sup>2</sup> Richmond County Records, Orders July 7, 1692.

<sup>3</sup> Westmoreland County Records, Orders June 24, 1685.

<sup>4</sup> Northampton County Records, Orders Nov. 7, 1645.

<sup>5</sup> *Ibid.*, vol. 1657-64, p. 192.

assure this was probably forced to appoint a special guard.<sup>1</sup> Fourteen years afterwards, Hancock Lee, at that time the sheriff of the county, urged the court to erect a jail; and his petition made so much impression on the justices that they entered into a contract with Henry Mathews, under which, in return for one thousand pounds of tobacco, he agreed to build one of the dimension of fifteen feet square. He himself was selected for the office of jailer.<sup>2</sup> The area adjacent to this prison, where the usual privileges and liberties were allowed, seems to have taken in a somewhat larger extent of ground than was ordinarily embraced within such bounds.<sup>3</sup>

A prison was standing in Accomac as early as 1666, since John Cross was, during that year, committed to the county "bridewell," for the period of a year and a day.<sup>4</sup> The structure was probably not very secure, as Captain John West, in 1667, petitioned the court to order the erection of a jail in which all persons arrested might be kept in strict custody; but that body was content to arrange with the sheriff for one of the houses on his plantation to serve as a place of incarceration.<sup>5</sup> It was apparently not until 1674 that the justices adopted measures for the construction of a regular county prison; in their contract with John Barnes, the latter was obliged to build a jail which should be fifteen feet in length and ten in width; and it was to stand within one hundred feet of the court-house. Barnes was required to supply all the materials that

<sup>1</sup> Northampton County Records, vol. 1664-74, folio p. 4.

<sup>2</sup> *Ibid.*, vol. 1674-79, p. 254.

<sup>3</sup> *Ibid.*, vol. 1689-98, p. 372.

<sup>4</sup> Accomac County Records, vol. 1666-70, folio p. 22.

<sup>5</sup> *Ibid.*, f. p. 30.

would be needed, the nails alone excepted; and by way of remuneration was to receive eight hundred pounds of tobacco.<sup>1</sup> This prison was built, but failed to continue satisfactory after it had been in existence for ten years. It was finally occupied by John Cole, who, in return for its use, agreed to find another house to serve as a jail in its place; and around this new jail an area of eighty poles was to be reserved as the bounds within which every prisoner, not committed for treason or felony, was to be allowed the liberty of exercise and fresh air.<sup>2</sup>

From the facts set forth in the previous paragraphs, it is evident that, during the Seventeenth century, there were not to be found in the Colony many prisons constructed of brick—that, with very few exceptions, indeed, they were built of wood—and that they required constant repairing to make them serviceable. In the beginning, the taverns in which the justices so often held the sessions of their respective courts, owing to the lack of court-houses, were very frequently used as jails; and when regular jails came to be erected, their average dimensions did not exceed fifteen by ten feet. It was only to be expected that structures so small and frail should offer no very serious barriers to the escape of determined criminals; and, in consequence, in many counties, it grew necessary to employ, at considerable expense, guards to keep a constant watch upon the prisoners' movements. In addition to this expense, there was the cost of their diet to be included in the levies. A bill presented against the county of Lower Norfolk in 1645 gives some idea of the charges thus entailed:—the sheriff's fee for committing the prisoner

<sup>1</sup> Accomac County Records, vol. 1673-76, p. 155.

<sup>2</sup> *Ibid.*, vol. 1682-97, p. 51.

named in the bill amounted to forty pounds of tobacco, and his compensation for supplying him with food, during a period of fourteen days, to four hundred and twenty pounds.<sup>1</sup> In York, at a later period, the allowance for a prisoner's support by the day was twenty pounds; but in Henrico, if he was a negro, it was only six.<sup>2</sup> In 1660, a charge of ten pounds was made in Northampton for a prisoner's guard, and in 1695, the same charge was made in Henrico.<sup>3</sup>

<sup>1</sup> Lower Norfolk County Records, Orders June 16, 1645.

<sup>2</sup> York County Records, vol. 1657-62, p. 246, Va. St. Libr.; Henrico County Records, vol. 1688-97, p. 16, Va. St. Libr.

<sup>3</sup> Northampton County Records, vol. 1657-1664, p. 177; Henrico County Records, vol. 1688-97, pp. 605-6, Va. St. Libr.

## CHAPTER XVII

### General Court: Early History

THE first court to be established among the English inhabitants of North America was the General Court of Virginia, whose lineal representative to-day is the Court of Appeals of the State; and throughout the Seventeenth century, it remained the highest purely judicial body of the Colony.<sup>1</sup> As the oldest as well as the highest court, it possesses extraordinary claims to pre-eminence in the history of the period now under consideration; and this pre-eminence is increased by the fact that its membership was composed of men who were the foremost of their times in ability, wealth, social rank, and political power.

The history of the General Court can be appropriately divided into two distinct periods: first, its history previous to 1619 when the Colony was held under arbitrary rule, and was in an unsettled condition, which extended its influence to the action of the court; and second, its history after 1619, when the Colony had become a self-governing community, and its affairs were regulated by its own Acts of Assembly and the laws of England,

<sup>1</sup> As we shall see, the right of appeal, for many years, lay from the General Court to the General Assembly; in a certain sense, therefore, the General Assembly was the highest court of the Colony, but it could not be called, as the General Court could be, a wholly judicial body; and its legal jurisdiction was in the end almost entirely taken away from it.

a fact in its turn also reflected in the action of the court. During the first period, the jurisdiction of the General Court was entirely original; during the second, original and appellate.

x When a Government was first organized for Virginia, the President and Council were invested with judicial as well as with political powers. They were particularly authorized to punish with death all persons convicted of rebellion, conspiracy, mutiny, sedition, murder, manslaughter, rape, and adultery; but the grounds of the original accusations had to be first investigated by twelve "honest, impartial, and sworn jurymen." There are numerous instances of the exercise of these judicial powers in criminal cases at the very threshold of the Colony's history. The first trial occurring before the President and Council in their character as a General Court was, no doubt, that of Captain John Smith, who had been arrested in the course of the voyage to Virginia, and kept a close prisoner until the expedition's arrival there. The charges against him having been shown to be untenable, he was admitted to a seat at the council board. The next trial of importance was that of Edward Maria Wingfield, the Governor of the Colony, who, having been deposed in September, 1607, was, during the same month, called up before the judges. Captain Gabriel Archer occupied the office of Recorder or Prosecuting-Attorney at this time. When the court began its session, its President, Ratcliffe, delivered a speech, in which he brought a number of frivolous accusations against Wingfield, such as that the latter had denied him a penny whistle, a chicken, and a spoon of beer, and had served him only with foul corn. Charges, in many cases even more trivial and childish, were ad-

vanced by other members of the body. When Wingfield asked for time in which to make his reply, the request was refused. "We know not," exclaimed Ratcliffe, turning to the defendant at this point in the inquiry, "whether you will abide our judgment, or whether you will appeal to the King. How say you?" "I appeal to the King's mercy," answered Wingfield. He was then committed to the custody of the master of the pinnace riding in the river at Jamestown, with the words:—"Look to him well. He is now the King's prisoner."

A few days after his conviction, Wingfield was led into court again to answer in an action brought by John Robinson against him because he had said that Robinson and others had "concerted to run away with the shallop to Newfoundland." On a second day, he was summoned to defend himself at the suit of Captain John Smith on the ground that he had accused Smith of "concealing an intended mutiny." In both cases, which were tried on the civil side of the court's jurisdiction, the services of a jury were needed. Robinson was awarded damages to the extent of one hundred pounds sterling, and Smith to the extent of two hundred, very large sums in that age, and very much out of proportion—even if they are accepted at their present value—to the character of the offences. Wingfield's property was seized in order to satisfy these extraordinary judgments. Smith, however, devoted his share to the general use of the Colony.

It is recorded of these civil trials before the President and Council that, when the verdict against the unfortunate defendant was announced, Archer said to him:—"If you have wrong, you may bring your writ of error to London," a course not likely to afford much



satisfaction to a man who knew his specific property would never be restored to him. The only indication which Wingfield gave of having heard this remark was a smile; and this, it may be taken for granted, was not without some scornful bitterness in the thought of so remote and expensive a remedy. "Seeing that law was so speedie and cheap,"—as he declared later in a spirit of irony,—he requested the court to order Master Crofts to return to him a copper kettle which he had borrowed; but Crofts was able to prove that the utensil was really a gift. Wingfield, after this final discomfiture, contented himself with telling Ratcliffe "that he had never known the like"; and he sarcastically begged the court to be more sparing of law until there were more wit and wealth in the Colony. "We were so poore," he added, "that the laws did rob us of time that might be better employed in service."<sup>1</sup>

At least one other person shared this opinion, for, when Gabriel Archer left the Colony to accompany Wingfield to England, Smith could not refrain from indulging in a sarcastic fling at his expense:—"Not having any use of Parliaments, Plaices, Petitions, Admirals, Recorders, Interpreters, Chronologers, Courts of Plea and Justices of the Peace," he wrote at the time, "we have sent Master Wingfield and Captain Archer home with him, that had ingrossed all these titles."<sup>2</sup> Perhaps, Smith was the less disposed to consider Archer's pretensions with patience and respect, because, before his departure, he had sought to indict Smith on

<sup>1</sup> Wingfield's Discourse, pp. lxxxi-iv., printed in Arber's edition of *Works of Captain John Smith*; see also *Works of Captain John Smith*, vol. i., p. 152, Richmond edition.

<sup>2</sup> *Works of Captain John Smith*, vol. i., p. 169, Richmond edition. Archer had suggested the holding of a Parliament at Jamestown.

the authority, not of English law, but of a clause in Leviticus. When Smith was captured on the Chickahominy by the Indians, two of his men were slain by the savages. After his rescue by Pocahontas and return to Jamestown, he was seized and tried as being, by Biblical canon, responsible for the murder of his two followers; and having been sentenced to be hanged the next day, he was only saved by the timely arrival of Captain Newport in command of the Second Supply. Well might Wingfield exclaim: "So slender is our law there!" Smith was, no doubt, tried by the rump of the High Court; but there is no proof that his case was submitted to the decision of a jury, for had that been done, it is not probable that Newport would have interposed. If the case was really tried by a jury, they could only have brought in such a verdict under instructions that the Levitical law was as much in force in Virginia as the English. At this time, it is only too evident that the proceedings of the General Court—if court it could now be called at all—were as summary as those of a court-martial. The legal forms, however, were strictly followed.<sup>1</sup>

Although the Charter of 1609 left the judicial powers of the President and Council, both in civil and criminal cases, in theory as they had been previously, the introduction of the Divine and Martial laws, for which Gates and Dale were responsible, appears to have deprived that body, in their judicial functions, of the right to administer justice according to the laws of the Mother Country, as they had been directed to do

<sup>1</sup> See indictment of James Read, the blacksmith, for assault on President Ratcliffe for which he was condemned to be hanged; Wingfield's Discourse, pp. lxxxiv.-v., printed in Arber's edition of Smith's Works. This indictment was framed by the Recorder.

in the original letters patent.<sup>1</sup> It is doubtful, however, whether the Divine and Martial code was more repugnant to the spirit of English jurisprudence than that Levitical canon under which Smith was tried and condemned to death. The history of the General Court as a court guided in its course by the well considered laws of England and Virginia, and not by the vindictive caprices of a Ratcliffe and an Archer, or the military regulations of a Dale, really begins in 1619, the year in which the Colony became practically a self-governing community for the first time. Previous to the establishment of the monthly court in that year, the General Court was the only single body of men who possessed any judicial power. As previously stated, its jurisdiction was wholly original, as there was no court either superior or subordinate to it. After the monthly court was created, the jurisdiction of the General Court was divided into original and appellate. We have already pointed out that the erection of a number of inferior courts for the convenience of different parts of the Colony became inevitable as the settlements spread out more and more remotely from Jamestown, and as the volume of the Colony's legal business steadily increased with the growth of wealth and population. No one court, whether the judges sat in one place or went on the circuit, could decide all the cases which would arise. This condition had been reached by 1619; and in relieving the General Court, by transferring much of its original jurisdiction to a series of local courts, the Company adopted a course which, in the interest of the various communities of Virginia, could no longer be avoided.

<sup>1</sup> See Charter of 1609, Brown's *Genesis of United States*, vol. i., p. 235; Abstracts of Proceedings of Va. Co. of London, vol. ii., p. 41.

## CHAPTER XVIII

### General Court: Place of Meeting and Membership

**B**EFORE entering into a description of the General Court's jurisdiction after 1619, as compared with its jurisdiction before that year, it will be of interest to inquire into some general details relating to it, such as its place of meeting, its regular time for holding its terms, the character of its membership, and the like.

First as to its place of meeting. It is probable that, in the course of the first years immediately following 1619, the General Court came together at least once a year in each of the four great existing corporations. From the beginning of this period, however, Jamestown was the place where it convened most frequently. But it also met occasionally elsewhere in the Colony. The record of terms for 1640 was perhaps in no particular unusual:—On May 6th of that year, a session of the court was held at Elizabeth City; during June and a part of July, the sessions were held at Jamestown; and also there during the whole of October, and during about one third of December. In this year, therefore, the court met only once away from the capital.<sup>1</sup> Towards the end of the Seventeenth century, it is probable that

<sup>1</sup> Robinson Transcripts, p. 20.

this body rarely assembled in any other place, although it rested in the power of the Governor, the president of the court, to summon it to convene at any place his judgment might suggest.

As early as 1643-7, the General Court occupied its own special offices in the State-House recently erected, but, in 1656, this building having been burned down, the members found it necessary to rent an apartment for their use in the residence of Thomas Woodhouse.<sup>1</sup> A new State-House was finished sometime previous to 1666, and here the General Court continued to hold its terms until the great insurrection of 1676.<sup>2</sup> When Jamestown was given over to the flames by the rebels, this building was among the principal ones consumed; and after that event, the General Court was again compelled for a time to lease special rooms in which to convene; for instance, in 1682, an allowance of forty-eight hundred and sixty pounds of tobacco was made in the public levy in Colonel William Browne's favor because he had provided offices for that body's occupation.<sup>3</sup> Two years afterwards, twelve hundred and forty-two pounds were appropriated as Captain William Armiger's remuneration for supplying the picture of the King's Arms, a chair, and the like for the use of the General Court room. At this time, both the General

<sup>1</sup> Acts of 1656, Randolph MS., vol. iii., p. 269. The instructions which Berkeley received in 1642 required him to see to the building of a General Court-house.

<sup>2</sup> Minutes of Council, Febry. 18, 1690, B. T. Va., 1690, No. 14. According to these minutes, the General Court, for some years after the destruction of the State-House in 1676, occupied a court-house which had been built at Jamestown by the justices of James City county.

<sup>3</sup> Minutes of Assembly, Nov. 10, 1682, Colonial Entry Book, 1682-95.

Court and the General Assembly were convening in Mrs. Macon's residence at Jamestown. Each body rented a separate floor.<sup>1</sup> By October, 1685, the new State-House was nearly completed, and here offices were soon assigned to the General Court.<sup>2</sup> Thirteen years later, this building was overtaken by the fate which had befallen all preceding it:—it was destroyed by fire; and until the capital's removal from Jamestown, the General Court continued to meet in the great hall of Mr. Sherwood's residence situated at that place.<sup>3</sup> In October, 1699, the Attorney-General, under instructions received from the Governor and Council, issued a proclamation, in which the General Court was ordered to hold all its terms in Williamsburg after May 10, 1700<sup>4</sup>; and here, until the capitol was finished, the judges met in one of the apartments of the College buildings placed at their disposal by the Trustees.<sup>5</sup>

The General Court was, during many decades, known as the Quarter Court because it met at least four times a year. At first, it seems to have convened in the Spring, Summer, Autumn, and Winter respectively, after the manner of the Quarter Courts of the London

<sup>1</sup> Minutes of Assembly, May 15, 1684, Colonial Entry Book, 1682-95; see also Colonial Entry Book, 1682-95, pp. 99, 109.

<sup>2</sup> Colonial Entry Book, 1682-95, pp. 298, 309. The House of Burgesses met on the upper floor, and this explains the expression occurring in its minutes: "The House of Burgesses went down into the Court-house"; see Minutes of Assembly, April 7, 1692, Colonial Entry Book, 1682-95. The State-House was known as the "General Court-house." Nicholson, in a letter dated Febry., 1698-9, refers to the "General Court-house, where the House of Burgesses sit."

<sup>3</sup> Minutes of Council Oct. 20, 1698, B. T. Va., vol. liii.

<sup>4</sup> *Ibid.*, Oct. 24, 1699, B. T. Va., vol. lii.

<sup>5</sup> "Ordered that the present General Court, at the end thereof, shall be impowered to sit at ye said College in October next"; Minutes of Council, April 24, 1700, B. T. Va., vol. liii.

Company held in England. This number of annual terms was made imperative by a law passed in 1621, which was, no doubt, a mere readoption of a previous regulation relating to the same point.<sup>1</sup> More than ten years later, this court was, by Act of Assembly, required to meet on March 1, June 1, October 1, and December 1; in other words, on the first day of each of the four great seasons, autumn alone excepted.<sup>2</sup> It was in the judges' power, at one time at least, to postpone any of these quarterly terms to a date rendered more convenient by special circumstances; for instance, in 1640, the one which was to have begun on March 1 was deferred until the twenty-ninth day of the month because the Assembly had been compelled, by unusually weighty affairs, to remain in session so long that no interval was left the members of the Council, or those Burgesses having business with the court, to visit their homes before the regular day of the March term should arrive. The postponement was authorized by a proclamation of the Governor, acting, no doubt, in his character as the chief judge of the court.<sup>3</sup>

The instructions given to Berkeley in 1642 required the General Court to continue in session one whole week, or longer if necessary, in order to determine the different cases presented to its consideration; should the business before the body demand it, the judges were to convene more than four times during a single year; and they were also left at liberty to choose, as the periods of their meetings, such months as they thought the most

<sup>1</sup> Abstracts of Proceedings of Va. Co. of London, vol. i., p. 126.

<sup>2</sup> Acts of Assembly, 1632, Randolph MS., vol. iii., p. 222.

<sup>3</sup> Proclamation of Gov. Wyatt, 1640, Accomac County Records, vol. 1640-45, p. 84, Va. St. Libr.

convenient.<sup>1</sup> The General Assembly (which included the Governor and Council in their political capacity, as well as the House of Burgesses) decided in the course of the following year that it would be best to fix the dates of the General Court's meetings by an Act binding on judges and suitors alike; and this was deemed the more imperative as much delay and confusion had already been caused by the sheriffs' defaults in bringing up criminals for trial, and the failure of both plaintiffs and defendants to appear when the cases in which they were interested were set for final determination. It was provided in this new Act that the March term of the court should begin on the first day of that month (unless it fell on Sunday), and continue for a period of eighteen working days; that the June term also should begin on the first day of the month, and continue for a period of ten days; and that the October term should resemble the June term in length; and the November term the March. The two most important ones, therefore, were the March and November. It will be seen that, by the requirements of this new regulation, the December term was done away with, and the November substituted for it as falling during a milder part of the year. Three return days were appointed for the March and November terms respectively; and two respectively for the June and October.<sup>2</sup>

During the period of the Commonwealth, when there were so many radical changes made in the fundamental order, the General Court seems not infrequently to have convened on the same days as the General Assembly; the judges of that court being also members of the Up-

<sup>1</sup> Colonial Entry Book, 1606-1662, p. 22.

<sup>2</sup> MS. Laws of Virginia, 1642-3, Clerk's office, Portsmouth, Va.; Henning's *Statutes*, vol. i., pp. 270-2.



per House, the object of this arrangement was perhaps to reduce the length of time they would be compelled to remain away from their homes. It is possible, however, that this coincidence occurred only at the General Assembly's regular winter session, and only then when the two Houses had occasion to extend their sittings beyond the beginning of the March term of the court.<sup>1</sup> In 1657-8, it was decided to be more convenient for the latter body to meet on the twentieth of March and November respectively than on the first of each of these months, as had been previously required; but no change was made in the dates on which the June and October terms began, as they did not conflict in any way with any possible prolongation of the sessions of the General Assembly.<sup>2</sup> One year later, however, the June term was entirely abolished, on the ground that the people at this season of the year were busy in planting or tending a new tobacco crop, and that to summon any of them to Jamestown to look after their business in the General Court would be very detrimental to their most important interest.<sup>3</sup> The only terms of that court held in 1662, were held in March, September, and November, the three months at this time thought to be most agreeable to every class of persons whose affairs required them to be present.

Down to 1662, the General Court was referred to in all legal documents as the Quarter Court. That designation was then seen to be inappropriate, as, for

<sup>1</sup> Randolph MS., vol. iii., p. 260. "The Assembly is adjourned till the 20th day of March at James City; the Quarter court is also adjourned till the 20th of March."

<sup>2</sup> Hening's *Statutes*, vol. i., p. 461; Randolph MS., vol. iii., p. 260.

<sup>3</sup> *Ibid.*, p. 524. At this time too all the cured tobacco had been shipped out of the country and no payments could be made.

several years, the judges' meetings had been restricted to three regular terms during every twelve months; this led the General Assembly to decide that the Quarter Court should, in the future, be known as the General Court; and such continued to be its legal name during the remainder of the century.<sup>1</sup> The same Act provided that the March term should last eighteen days, and the September and November twelve respectively. At a later date, it was concluded that two terms of the General Court would be sufficient for the settlement of all the business likely to come before it in the course of a year; these terms were designated as the Spring and the Autumn; the Spring term began on the fifteenth of April, and the Autumn on the fifteenth of October; and each continued for at least eighteen days. Subsequently, it seems to have been thought that two terms were inadequate, and there was apparently a return to the former rule requiring three, two of which were appointed for the Autumn.<sup>2</sup> This was so much opposed to the convenience of the people, who, at this season, were busily engaged in cutting, curing, or loading on shipboard their crops of tobacco, that the plan of two terms alone a year was again adopted; and there seems to have been no further change, even for a time, during the remaining years of the century, a proof that it was really the arrangement best suited to the

<sup>1</sup> Hening's *Statutes*, vol. ii., p. 58. The reason given by the General Assembly was that there were "but three of these courts in the year, and also they are not equally distributed into the quarters of the year." This arrangement was still in operation in 1666; see letter of Ludwell to Arlington, Winder Papers, vol. i., p. 205, Va. St. Libr.

<sup>2</sup> Acts of Assembly, April 16, 1684, Colonial Entry Book, 1661-84; Hening's *Statutes*, vol. ii., p. 227.

general needs of all who had business with the court.<sup>1</sup>

The composition of the General Court, from its foundation until the close of the century, does not appear to have undergone any change:—its membership throughout that long period always consisted of the Governor and the whole body of persons belonging to his Council. The Governor, by virtue of his office, served as the President of the court; and whenever he was prevented, either by sickness, or by his absence from Jamestown, from attending, the Secretary of State took his vacant seat at the head of the bench.<sup>2</sup> The number of members required to be present before the transaction of business could be legally begun was at one time fixed at three; at another at five; and the latter number continued to be necessary during the greater part of the century.<sup>3</sup> In 1631, every member of the court who failed to appear at a sitting was compelled to pay a fine of forty shillings.<sup>4</sup>

The body's competency from a purely judicial point of view failed to commend itself very highly to some of the attorneys practising at its bar who had received their legal training in England, and, by actual experience, were acquainted with the English courts. Such a lawyer was Henry Hartwell, who was disposed to criticise the General Court on two grounds:—first, that

<sup>1</sup> Hening's *Statutes*, vol. iii., p. 10; Beverley's *History of Virginia*, p. 207; Report of Culpeper, 1682-3.

<sup>2</sup> Hening's *Statutes*, vol. ii., p. 533; British Colonial Papers, vol. xlii., No. 3.

<sup>3</sup> Hening's *Statutes*, vol. ii., p. 533. Ludwell, in a letter to Arlington, written in 1666, declared that the number necessary at that time was three. The charter proposed in 1676 fixed it at five; and this was the number necessary at the end of the century; see Beverley's *History of Virginia*, p. 207.

<sup>4</sup> Randolph MS., vol. iii., p. 215.

it was composed of men who had enjoyed no legal education; and secondly, that these men also, in their capacity as Councillors, exercised political powers. The administration of justice, he declared, ought to be a check on the administration of political affairs; as both duties were, in Virginia, lodged in the same hands, no such check existed there at all; and in this respect, the Colony differed from every other community forming a part of the British dominions.<sup>1</sup> Touching the knowledge of law possessed by the Councillors composing the General Court, Hartwell, when questioned by the Committee of Plantations, gave an unfavorable reply, and urged that that court should be made up of men who had received a special training. It is doubtful, however, whether, in expressing this opinion, he was not led by his prejudice as a professional attorney to depreciate too much the Councillors' judicial fitness simply because he was aware that they had never studied or practised law formally. It should be remembered, in opposition to his view, that they were, without exception, men of wealth accustomed to the management of important business; that they were generally advanced in years, and, therefore, possessed an enlarged experience of life; that they had, as a rule, been residents of the Colony either from birth, or during a long period, and, in consequence, were thoroughly familiar with every aspect of its condition and every branch of its affairs; that the greater number of them had sat as justices on the county bench before being called to the Council, and had there informed themselves as to the details of legal procedure and also as to

<sup>1</sup> *Present State of Virginia, 1697-8*, section vii. This section of this well known treatise, if not actually written by Hartwell, one of the authors of the work, was certainly approved by him.

the general principles of law; and finally, that the character of the cases coming before them for settlement was, no doubt, in general very simple, as Virginia was a purely agricultural community, with little room for any complexity of interests from an economic point of view.

The competency of these men, so far as mere knowledge of jurisprudence was concerned, was certainly increased by private study of authorities. In theory, the office was held during the Governor's pleasure, but, in practice, for whatever length of time the incumbent desired. The Councillor was aware that, during good behavior, he could look forward to a long tenure of the position; and this fact alone must have been a strong inducement to him to equip himself as far as possible for a creditable performance of his duties as judge by acquiring something more than a smattering of the simplest rules of law. He must also have been stimulated by the recollection that the ablest, most learned, and most accomplished members of the legal profession of whom the Colony could boast, practised in the General Court. Nor was the average Councillor likely to have been without the volumes containing all the information he was anxious to obtain; there were few large collections of books to be found in Virginia at this time which did not include the principal legal works of that day; and the far greater number of these collections were in the possession of the members of the social class to which the judges of the General Court belonged.

One of Hartwell's chief grounds of complaint against the court was that its proceedings were conducted without those formal pleadings which, in England, had long become a regular system dear to the hearts of the

English attorneys, but not the less tending occasionally to divert attention from the points of fact or law really at issue.<sup>1</sup> It was due largely to the absence of this subtle and artificial system that the more or less untrained judges of the General Court were the less inefficient in carrying on its business. Beverley, who was more disposed than Hartwell to speak with appreciation of the conditions prevailing in Virginia, since he had for the Colony all the peculiar affection of a native, declared, and, no doubt, rightly, that the members of that court sought to "come to the merits of a cause as soon as they could without injustice." Like the judges of the county courts, they never admitted "unnecessary impertinences of form and nicety." "By this means," Beverley remarks approvingly, "all the trickery and foppery of the law were happily avoided." That this simplicity and directness commended itself to minds not biassed favorably by local patriotism, like Bever-

<sup>1</sup> Hartwell, as already stated, very probably wrote the paragraphs in the *Present State of Virginia, 1697-8* relating to the courts of Virginia and their procedure; see section vii. In March, 1661-2, the General Assembly prescribed the following manner of opening the General Court: "Let the cryer or under sheriff make proclamation, and say 'Oyes, Oyes, Oyes, Silence is commanded in court while his Majesty's Governor and Council are sitting, upon payne of imprisonment.' Suitors now appear. After silence commanded, let the cryer make Proclamation saying: 'All manner of persons that have anything to doe at this court draw near, and give your attendance. And if anyone have any plaint to enter or suite to prosecute, let them come forth and they shall be heard.' When silence is thus commanded and Proclamation made, upon calling the dockett, the cryer shall call for the Plaintiff. Calling the Plaintiff: 'A. B., come forth and prosecute thy account against C. D. or else there will be non-suite'; and the plaintiff putting in his Declaration, the cryer shall call for the Defendant. 'C. D. come forth and save thee and thy Baile or else thou wilt forfeit thy Recognizance.'"

Acts of Assembly 1661-2, Colonial Entry Book, vol. lxxxviii., p. 6.

ley's, or prejudiced unfavorably by the influence of a strict legal training, like Hartwell's, was shown by the admiration which these characteristics of the court elicited from Lord Culpeper, a man well versed in English law; we are told that his constant aim as President of that body was to keep the justices as close to their "plain method" as possible; and that he even went so far as to do away with certain innovations which had been allowed to creep in, in order to give the proceedings greater formality. Howard, on the other hand, endeavoured to introduce many of the pleadings of the English courts; and Nicholson, who possessed an even smaller knowledge of law, was eager to push even further in the same direction. According to Beverley (who, however, regarded him with little kindness), the latter Governor strove to drag into the General Court all the "quirks" of the English procedure, in which policy, according to the same authority, he had the active encouragement and assistance of "some wretched pettifoggers." The "pettifoggers," however, were probably men who had been educated in their profession under the influences emanating from the English inns-of-court or from the English courts themselves.<sup>1</sup>

<sup>1</sup> Beverley's *History of Virginia*, p. 205. Writing in 1666 to Arlington, Thomas Ludwell stated that no advantage was allowed either party in the General Court from little errors in declaration of pleas by his opponent, "but both were kept in the just limits of the merits of their cause or judgments." There were, he says, few delays except on ground of sickness of one or both of the parties or of the witnesses.

## CHAPTER XIX

### General Court: Its Original Jurisdiction

THE jurisdiction of the General Court was both original and appellate. Apparently, it had original as well as appellate jurisdiction in all those civil cases involving a larger figure than the figure limiting the right of appeal from the county court, which, as we have seen, varied at different periods.<sup>1</sup> But by far the most important feature of the General Court's original jurisdiction was its exclusive right to try all criminal cases in which the punishment prescribed by law was loss of life or limb; a right revoked but once, and this occurred during the period of the Commonwealth when so many changes were made in obedience to the popular will, then possessing so much power to express itself freely. An Act was passed early in the

<sup>1</sup> At the close of the century, the original as well as appellate jurisdiction of the General Court lay in all those civil cases that involved more than £16 or 1600 lbs. of tobacco; see *Present State of Virginia, 1697-8*, section vii.; Culpeper's Report, 1681. We use the word "apparently" in the text, as the statements of the two authorities quoted are not perfectly clear in meaning. It is probable that the jurisdiction of the General Court in civil cases only as a rule arose in actual practice (whatever may have been that court's theoretical right) after appeal from the county court. The fewness of the annual terms of the General Court towards the end of the century would seem to show that its time was not much occupied with civil cases independently of those coming to it through its appellate jurisdiction.



history of this period requiring that every criminal, whatever his wrong-doing or however heinous, should be tried in the county where his offence had been committed; which may have signified that the county court was to institute the investigation and impose the punishment even when the penalty of the crime was loss of life or limb.<sup>1</sup> In a very few years, this law, stated to have been adopted for the people's relief, was repealed, and all cases, the issue of which involved so extreme a penalty, were restored to the exclusive jurisdiction of the General Court.

The reason given for this return to the former regulation shows the great care exercised by the General Assembly for the citizen's protection:—it was declared that the jurors in Virginia, unlike the persons performing the same functions in England, being unpractised in criminal cases, were, by their inexperience, too likely to put innocent lives in jeopardy; it was, therefore, deemed advisable that all cases of capital crimes, or crimes punished by deprivation of limb, should thereafter be reserved for trial in the General Court, or the Assembly itself, because these two bodies were composed of men remarkable for the ablest and most discriminating minds to be found in the Colony.<sup>2</sup> We discover at a later time the same reason in substance influencing the selection of the dates on which the terms of the General Court were to begin; in March 1661-2, the General Assembly, in adopting special rules for the consideration of criminal cases by that court, declared

<sup>1</sup> It may have been intended that the trial in the county should be conducted, not by the county court, but by a special court appointed under the provisions of the ordinary writ of Oyer and Terminer, an account of which appears in a later page of the text.

<sup>2</sup> Acts of Assembly, 1655-6, Randolph MS., vol. iii., p. 262.

that the foremost men in Virginia, whether for talents or integrity, attended its sessions; and that, as only juries composed of persons of this stamp should try cases upon whose issue loss of life or limb depended, such cases should be set, not for the first, but for the fourth day of the term, when it was certain that a larger number of such citizens would be present in town.

The principal crimes of which the General Court took original cognizance were murder, arson, treason, mutiny, piracy, and rape. What was true of the general procedure in a case of murder brought before that court was also true, as a rule, of the procedure followed in cases of the other offences named.

As soon as the fact of a murder having been committed was reported to the coroner,—the first officer of the law to investigate it, should a body be discovered,—he summoned a jury to hold an inquest; if they reached a verdict acquitting the person accused of the crime, he was discharged; on the other hand, if there was good reason to suspect that he had done the act, he was forced to give bond to appear at the next county court, which, after an inquiry, either set him free or sent him on to the General Court for trial at its next term. If the coroner's jury decided that the accused was certainly guilty, then he was at once imprisoned in the county jail. As soon as the grand jury had brought in a true bill against him, it became the sheriff's duty to give notice of the fact to the Secretary of State at Jamestown, by whom, upon receipt of such notice, a *scire facias* was issued to the same officer authorizing him to impanel six persons, selected from among the citizens of the county where the crime was committed, for the trial of the case when it should come up before the judges

of the General Court.<sup>1</sup> These six jurors were, as already stated, to unite with six others chosen from among the prominent gentlemen in the habit of visiting Jamestown while that court was in session. The theory of this rule was that the jurors summoned from the vicinage would be able to give much valuable information, while the jurors without any connection with the county where the crime had occurred, would be apt, by their impartiality and disinterestedness, to check any possible bias for or against the persons which might influence the minds of their associates who had such connection. The names of the jurymen chosen at Jamestown were always put in front of the panel, as they had been selected for their special fitness for the office.<sup>2</sup> The prisoner was at liberty to challenge a juror, and if sustained, the vacancy was filled from the ranks of the bystanders.<sup>3</sup> The trial then proceeded in as close conformity with the laws of England as was practicable.<sup>4</sup>

The witnesses were summoned from the neighborhood where the murder had been committed; and the necessity of their presence led to one of the heaviest items of expense entailed by such a trial, for each was

<sup>1</sup> "Whereas in ye year 1673 a writ was sent down from Jamestown to the then sheriff, Capt. William Robinson, for the impannelling of six men in this county as a half jury for ye tryal of a case then depending between our sovereign King and Henry Britt etc.;" Lower Norfolk County Records, Orders Aug. 18, 1675. Sometimes, the *scire facias* was anticipated, and the county court, before its arrival, would order the sheriff to summon six men, and with the prisoner, witnesses, and the half jury, proceed to Jamestown by the fourth day of the following term; see Northumberland County Records, Orders Oct. 9, 1671.

<sup>2</sup> Beverley describes these juries as the "best that Virginia afforded"; see *History of Virginia*, p. 207.

<sup>3</sup> Beverley's *History of Virginia*, p. 207.

<sup>4</sup> Colonial Entry Book, 1675-81, p. 42.

entitled to receive twenty pounds of tobacco for every day he spent in travelling to and from Jamestown, and fifty pounds for every twenty-four hours he was required to remain in attendance on the court.<sup>1</sup> When it was imperative to use boats for the transportation of witnesses and jurymen, the costs on this account had to be added to the fees. The total charges for the trial of a murderer in the General Court must have been very great even when he had been sent up from a county near by; but these charges must have been far more onerous when he came from a county situated on the remote frontiers, the least able to bear them. How heavy the burden was is indicated by certain entries in the record of a case which, in 1665, occurred in Lancaster; the criminal in this instance, James Burgess by name, was accompanied to Jamestown by only four persons, who were serving either as witnesses or as guards; and yet the total amount which the county had to pay for them alone was seven hundred pounds of tobacco. Burgess had already cost the county four hundred by his confinement in Captain Ricks's house.<sup>2</sup> In a murder case sent up from Lower Norfolk in 1666 for trial in the General Court, the expenses of all kinds exceeded thirteen thousand pounds of tobacco.<sup>3</sup> This was perhaps extreme, but there is no reason to doubt

<sup>1</sup> Hening's *Statutes*, vol. ii., p. 64. In 1662, owing to the remoteness of many persons from Jamestown, the cost of producing witnesses there in a civil suit sometimes exceeded the entire sum involved. In these civil cases, an Act, passed in the course of this year, allowed a *Dedimus Potestatem* to issue for examination of witnesses in the counties where they resided. The depositions alone were returned to the General Court; see Revised Laws of 1662, Colonial Entry Book, vol. lxxxix. No such provision, however, was made for criminal cases.

<sup>2</sup> Lancaster County Records, Orders Nov. 11, 1665.

<sup>3</sup> Lower Norfolk County Records, vol. 1656-66, p. 412<sup>2</sup>.

that most of these cases imposed a total charge falling little short of five or six thousand pounds of that commodity.<sup>1</sup>

It was provided, in 1644, that all charges of this nature should be paid by the county where the crime was committed, should the accused be convicted; but if acquitted, by that person himself.<sup>2</sup> Twenty-two years afterwards, the rule was adopted that, should the accused possess no property to meet the expenses of his trial, one half of these expenses should be borne by the county and the other half by the Colony at large.<sup>3</sup> In the course of this year, the General Court entered an order that the costs entailed by certain criminals sent up from Nansemond for trial, and, no doubt, lacking in means, should be met by a levy on its citizens.<sup>4</sup> That a county was sometimes entirely exempted under these circumstances was shown by the case of Edward Boswell which came before the General Court in 1666:—by an order of the Lancaster court, his estate was mulcted for the expenses of all the jurymen as well as of all the witnesses summoned to Jamestown. The outlay on the jurymen's score alone was estimated at twenty-three hundred and seventy pounds of tobacco.<sup>5</sup>

Sometimes, a person charged with murder who had

<sup>1</sup> The levy for Oct. 18, 1671, in Northumberland county contained an item of 6994 lbs. of tobacco, representing the charges on account of a murderer sent up to Jamestown for trial.

<sup>2</sup> Hening's *Statutes*, vol. i., p. 285.

<sup>3</sup> *Ibid.*, vol. ii., p. 240.

<sup>4</sup> See General Court Orders, Oct. 24, 1666, Robinson Transcripts. p. 251.

<sup>5</sup> Lancaster County Records, Orders June 9, 1666. In this case, the criminal possessed property, which, by Act of Assembly passed in this year, as already stated, was made liable for the expense of his prosecution; see Hening's *Statutes*, vol. ii., p. 240, already quoted.

been sent to Jamestown to stand his trial, was, after an investigation of the circumstances of the case there, removed to the court of the county in which the act had been committed, with instructions that such steps should be taken against him as the law directed "in order to his tryal at ye next General Court." It is probable that such an instance occurred only when there had been some irregularity in the original proceedings. In 1694, Ann Arrington, a servant of John Wise, of Accomac, having been returned in this manner, the county court summoned a grand jury who, after inquiring into the question of her guilt, pronounced her innocent<sup>1</sup>; and she was, no doubt, discharged.

A person accused of murder, instead of being brought before the General Court at Jamestown, very frequently was tried in the county where he had committed the act, by a court established by a commission of Oyer and Terminer, issued by the Governor with the Council's approval. When that officer received his appointment, he was specially authorized to issue such a commission in the manner provided for immemorially by English law, in which this writ had always played a great part. It was stated in Berkeley's Instructions in 1661 that the commission of Oyer and Terminer had been granted him at his particular request because it would lead to more thorough administration of justice by making possible a stricter punishment of the more heinous offenses.<sup>2</sup> The court formed in accord with the terms of this commission was really the General Court's representative, and exercised its powers by delegation. Perhaps, the chief reason for its temporary creation was set forth in the case of John Devall, of Rappahan-

<sup>1</sup> Accomac County Records for 1694, p. 137.

<sup>2</sup> Colonial Entry Book, vol. 1606-1662, p. 275.

nock county, who, in 1691, murdered Robert Peachey under circumstances of extraordinary atrocity:—the Governor and Council, in issuing the commission in this case declared that the crime had been perpetrated so lately that it would be impossible to bring the accused to Jamestown by the fourth day of the first term of the General Court: and that it would be a great charge on the county, and very hazardous to the criminal's safe custody, to keep him in jail until the second term should arrive.<sup>1</sup> The earliest suggestion as to the advisability of issuing the writ came very often, not from the General Court, as in this case, but from the justices of a county court; who, however, were always required to show that there were special reasons why their request should be granted.<sup>2</sup>

In punishing slaves for an attempted insurrection, which always raised a dread of universal massacre, the commission of Oyer and Terminer was the usual process, as it was imperative that the penalty for such a crime, in order to have the greatest exemplary effect, should be enforced with extraordinary quickness. In October, 1687, Secretary Spencer, a resident of Westmoreland, reported to the Governor and Council that there had come to light in the Northern Neck a negro plot having for its object the destruction of the white people from one end of the Colony to the other. This conspiracy, it appears, had been encouraged by the fact that many slaves were allowed by their masters to stroll about the country on the Saturday half-holiday and on Sunday, and to attend funerals in a body; under both of which circumstances they could easily seize an

<sup>1</sup> Minutes of Council, April 16, 20, 1691 B. T. Va., 1691, No. 27.

<sup>2</sup> If the crime was not capital, the writ was refused; see Minutes of Va. Council, April 14, 1694 Colonial Entry Book, 1680-95.

opportunity to concert a deadly scheme. The Governor issued a commission naming Secretary Spencer, Richard Lee, and Isaac Allerton, all members of the Council and of the General Court, as the judges by whom the conspirators were to be tried.<sup>1</sup>

In the course of 1694, a commission of Oyer and Terminer was issued for the trial in Accomac of Jenny, the Indian slave of Dr. George Nicholas Hack, who was accused of murdering her infant child; but after an extended inquiry she was discharged as innocent.<sup>2</sup> About the same time, a similar commission was issued for the trial of Tom Cary, a negro of Northampton, who having entered a dwelling house by stealth first robbed it and then set it on fire, thus exposing the inmates to the risk of a terrible death. For this, he was sentenced to the gallows.<sup>3</sup> Two years later, a commission was issued for the trial in Middlesex of Tom, a slave of Christopher Robinson, who had broken into his master's store; he was found guilty; but instead of being hanged, was condemned to receive sixty lashes, to sit in the pillory, to lose one of his ears, and finally, to be sent out of the Colony and sold.<sup>4</sup>

Although murder, of all the capital crimes, was the one most frequently tried in the General Court, or in its temporary substitute, the court formed by authority of a commission of Oyer and Terminer, nevertheless even this offence, heinous as it was considered to be from the blow it struck at the community's peace and safety, yielded in importance to the crime of treason or mutiny,

<sup>1</sup> Colonial Entry Book, 1680-95, p. 255.

<sup>2</sup> Accomac County Records, vol. 1690-97, folio, p. 135.

<sup>3</sup> Northampton County Records, vol. 1689-98, pp. 237-8. This case gives with great minuteness all the details of the court's procedure in condemning a prisoner to death.

<sup>4</sup> Middlesex County Records, vol. 1694-1703, p. 340.



which also belonged to the General Court's exclusive original jurisdiction because the punishment for it was loss of life. I have already referred to the cases of mutiny arising previous to 1619; after that year, the first instance of this crime to occur was Governor Harvey's deposition by the concerted action of his Councillors. John West, Samuel Mathews, William Pierce, George Menifie, and Francis Pott, who took the most energetic part in his removal, having been ordered to return to England, were brought before the Star Chamber for having forced the Governor to abandon his office, and for having chosen another person to occupy it.<sup>1</sup> In this case, the offence was not allowed to be investigated by the General Court, perhaps because the perpetrators had themselves been the most influential members of that body; and their successors, it was anticipated, would certainly be biassed in favor of such distinguished citizens, especially as their conduct was regarded in the Colony with almost universal approval. In addition, the deposition of a Governor was on its face the most heinous form of treason which could be committed, unless it was to take part in a rebellion against the King himself. In a certain light, it was a denial of allegiance to the throne, as the Governor was looked upon as the representative of the royal dignity and power. This was the only instance of the kind occurring in Virginia during the Seventeenth century.

From the violent manner in which the persons who had taken the most active part in the insurrection of 1676 were treated after it came to an end, it is doubtful whether any of them were tried at all by the only civil court having the power to inflict punishment for their supposed treason. The unfortunate Drummond, for

<sup>1</sup> British Colonial Papers, vol. x., No. 73.

instance, seems to have been ordered to execution only a few hours after his arrest; and there were other cases quite as summary which reflect an equal degree of shame and disgrace on Berkeley's memory.<sup>1</sup> So vivid was the recollection of the terrors aroused among the authorities by Bacon's followers that, when, in 1684, what was known as the "Plant-cutters' Rebellion" occurred, the men who had run at the head of the frenzied crowds in that singular popular tumult were put upon their trial before the General Court as if they were so many common mutineers, although Culpeper had the fairness to acknowledge that their only object had really been to raise the price of tobacco (at that time extraordinarily depressed) by forcibly reducing the quantity growing in the fields. Two of the ring-leaders were sent to the gallows; but the principal one of all received a full pardon from Sir Henry Chichely, the acting Governor, on condition that he should build a particular bridge, which, as Culpeper afterwards pointed out with cynical humor, was very convenient to Chichely's plantation.<sup>2</sup> Alarmed by this strange commotion, the General Assembly declared that, should eight or more persons come together for the purpose of destroying tobacco plants belonging to other people, and after being warned by proclamation, refuse to disperse within the space of four hours, they were to be taken to be guilty of treason, and were to suffer the

<sup>1</sup> Lawrence, another leader, fled into the forests and was never heard of again, but his estate was confiscated because "he had committed actual rebellion against his Majesty." The debts due him were ordered to be paid to the King; see Rappahannock County Records, Orders March 4, 1685-6. There is reason to think that most, if not all, of the so-called rebels who were hanged had been sentenced by court martial.

<sup>2</sup> British Colonial Papers, vol. xlvi., No. 11.

penalty for that crime. This characterization of plant cutting (which appears very arbitrary on its face, for at the worst the Plant-cutters' Rebellion did not exceed the proportions of an ordinary riot) is explained by the existence of an old English statute that pronounced as treason all conspiracies tending, whether by design or not, to abridge the King's customs. Those customs were, in 1684, shortened by every acre of the growing tobacco destroyed by the Plant-cutters; nor was it any alleviation of the offense that the wild and misguided people were innocent of any purpose to curtail the royal revenues. The practical effect, however, was the same, and they were compelled to suffer in consequence.<sup>1</sup>

Piracy, a crime occurring very frequently in the Colony in the latter part of the Seventeenth century, was one of the most serious offenses falling within the General Court's original jurisdiction. In many of the earlier cases, the persons charged with it were sent in irons to England in order to be brought before the Court of Admiralty; there is, however, reason to think that this took place only when the acts they were accused of had been committed, not off the coast of Virginia, but in remoter waters. In 1665, for instance, Captain William Whitney was arrested on his arrival in the Colony, on the ground that he had fired upon and captured a Spanish vessel on the high seas; and by the next ship he was transported to England to stand his trial. In such a case as this, the General Court does not appear to have awaited a command from the Mother Country, but took the necessary steps on its own motion.<sup>2</sup>

<sup>1</sup> Henning's *Statutes*, vol. iii., p. 11.

<sup>2</sup> *Virginia Magazine of Hist. and Biog.*, vol. v., p. 24; *General Court Orders*, 1665, Robinson Transcripts, p. 250.

Twenty years afterwards, a man named McKeel and several other persons accused of piracy, were, by the instructions of the President and Council (sitting, in the Governor's absence, very probably as a General Court) brought up to Jamestown by the sheriff of Nansemond, perhaps to have their offense investigated by that court preliminary to their being sent to England for the final adjudication of their case.<sup>1</sup>

When the act of piracy had been committed in the waters of Virginia, the trial of the persons guilty took place in the Colony.<sup>2</sup> Such a trial occurred, in 1700, at Elizabeth City when three outlaws, Houghing, France, and Delaunay by name, who had been captured in Lynnhaven Bay, were brought to the bar. The court investigating their case had been formed by the authority of a commission of Oyer and Terminer; but of the fourteen judges composing it, at least five were members of the General Court by virtue of their office as Councillors. Such a court in this particular case performed the delegated functions of the local Court of Admiralty, now established, and served in its place simply because special circumstances made the doing so in this particular instance more conducive to the public interests.<sup>3</sup> The determination of the facts touching these pirates was left as usual to the verdict of a jury. As one of them was acquitted by this body, the wrath of the Attorney-General, Edmund Jennings, who acted as the public prosecutor, burst forth very hotly:—"You will

<sup>1</sup> Minutes of Assembly, Oct. 5, 1685, Colonial Entry Book, 1682-95.

<sup>2</sup> By an Act of Assembly passed in 1659-60, the General Court, sitting as an Admiralty Court, was authorized to try by jury all cases of piracy; Henning's *Statutes*, vol. i., p. 538.

<sup>3</sup> See account of Courts of Admiralty in a later section of the present work.

do well," he exclaimed loudly, "to consider your evidence." "We have done according to our consciences," replied the jury, with great spirit. "If your consciences go contrary to your evidence," retorted the Attorney-General, more angrily than before, "I would not have such a conscience. If you have plain evidence that the man was on board with the rest, your consciences cannot tell you that his intentions were different from his actions." In spite of Jennings's sharp rebuke, the jury persisted in their verdict. The acquitted pirate was then committed on a second charge, a grand jury summoned to indict him and a petty jury to try him, which condemned him to be hanged.<sup>1</sup>

The first jury's action in this case illustrates a disposition observed in previous trials of pirates in the Colony. In a communication from the English authorities to Governor Howard about ten years earlier, it was stated that this class of offenders were brought up for trial in Virginia so quickly that no evidence could be produced against them, and in consequence the most notorious outlaws were, by "the facility or partiality" of the juries, relieved of the charge, and permitted to resume their life of crime and depredation on the ocean. An order was given the General Court to hold such persons in prison until all the proofs had been procured as near as may be from the place where the acts of piracy had been committed.<sup>2</sup> In the case tried at Elizabeth City, there was the fullest assurance of the murders and robberies perpetrated by the men at the bar, and yet, as we have seen, one would have escaped but for the stern interference of the Attorney-General. It is possible that these adventurous rovers,

<sup>1</sup> B. T. Va., vol. lii., p. 67.

<sup>2</sup> Colonial Entry Book, 1685-90, p. 186.

who carried their lives in their hands, and who frequently atoned for wild scenes of brutal cruelty by showing an impulse of generosity, were looked upon by the jurymen of Virginia with some of that admiration aroused in English jurymen's minds by the dare-devil exploits of gentlemen of the road like Dick Turpin, Jack Sheppard, and Jonathan Wild.

Among the other serious offenses embraced in the General Court's original jurisdiction was rape; but this was an unusual crime in the Seventeenth century. One of the few instances in which it was committed by a negro occurred, in 1677, in Westmoreland county.<sup>1</sup> About 1669, Henry Smith, of Accomac, a white man, was tried for this offense at Jamestown by the General Court.<sup>2</sup> Attempted rape was not punished at this period with the severity shown in our own times. This was illustrated in the case of Thomas Jones, the servant of Mrs. Elizabeth Brown, of the Eastern Shore, referred to already in another connection; he entered her room with a drawn rapier, and on his threatening to kill her should she resist, she fled out of doors in terror; following her, he wounded her several times in the throat before she finally escaped from his clutches. Jones seems to have been tried for this offense by a bench of justices simply because he failed to accomplish his object; had he succeeded, he would have been sent up to the General Court. He was sentenced to receive thirty-nine lashes, to have his hair cut off, and to wear an iron collar; and also to remain in his mistress' service several years after his first term should expire.<sup>3</sup>

<sup>1</sup> Westmoreland County Records, vol. 1665-77, folio, p. 308. There is another instance which is recorded in Henrico county.

<sup>2</sup> Robinson Transcripts, p. 256.

<sup>3</sup> Accomac County Records, vol. 1678-82, p. 89.

If a prisoner was found guilty by the jury summoned to try him in the General Court, there seems to have been no right of appeal from the judgment there formally passed on him; the Governor, however, by the terms of his commission of office was empowered to grant a pardon unless the crime was that of wilful homicide or treason; in which cases he was authorized to allow a reprieve until the details could be submitted to the King.<sup>1</sup> William Dalby and Edward Legg were, in 1693, convicted of William Marshall's murder; but as there were extenuating circumstances, their execution was deferred until representations in their favor had been made. By the King's order, they were sent to England for trial; the probable explanation of which transfer lay in the fact that both Dalby and Legg were sailors and English citizens.<sup>2</sup>

Sometimes, the King's general proclamation of pardon saved from trial, and perhaps from death, a person accused of a capital crime. In 1660, Katharine Pannill, in striking a servant girl, unintentionally ran a small piece of the skewer with which the blow was delivered, into the girl's eye; this led to the putrefaction of the ball, which resulted in her death. The woman, having been arrested, was about to be sent on to the General Court when a copy of Charles the Second's proclamation of pardon, issued at the date of his restoration, was received, and she was released.<sup>3</sup>

<sup>1</sup> Beverley's *History of Virginia*, p. 207. Chichely, in pardoning one of the convicted plant-cutters in 1684, was either exceeding his powers, or the act of treason of which this particular plant-cutter had been guilty was not considered grossly wilful.

<sup>2</sup> Orders of General Court, Sept. 1, 1693, Colonial Entry Book, 1680-95.

<sup>3</sup> Northampton County Records, vol. 1657-64, folio p. 81.

## CHAPTER XX

### General Court : Its Appellate Jurisdiction

**A**N important function of the General Court, which came within the scope rather of its appellate than of its original jurisdiction, was to interpret for the guidance of the county justices, at their special request, the legal meaning of Acts of Assembly,<sup>1</sup> as well as that of particular clauses in last testaments. During the period of the Commonwealth, some doubt having arisen in the minds of the Lower Norfolk judges as to how certain parts of Henry Woodhouse's will should be construed, the question was submitted, not to the General Court, according to the ordinary custom, but to Governor Digges alone, the President of that court by virtue of his office.<sup>2</sup> Such a course as this was not pursued after the close of the Protectorate; when, in 1683, the will of James Porter, also of Lower Norfolk, was presented by his executor for probate, his widow produced an ante-nuptial contract to prove that her husband had agreed to give the whole of

<sup>1</sup> Lower Norfolk County Records, Orders Dec. 15, 1642.

<sup>2</sup> See Lower Norfolk County Records, vol. 1651-56, p. 195. "My opinion is that ye devise in these words 'and the remainder to be equally divided amongst my children' all ye children as well by the former as by the latter wife shall have three shares, and it seems plaine yt ye legacies of five shillings to the former and the silver spoon to the latter doe not take away the first guift, Edward Digges."



his estate, whether then possessed or to be acquired, to her and the heirs of her body by him. Did this document supersede the testament? The point was fully debated, and as there were no precedents relating to it to govern the action of the judges, they decided to refer it to the General Court for an opinion.<sup>1</sup>

The General Court was sometimes appealed to in order to compel a bench of justices to reconsider their own decision. As early as 1640, the former body, on petition from one of the parties interested in the suit, ordered the rehearing of a case which had been tried in a county court.<sup>2</sup> Walter Bruce, of Nansemond, complained to Governor Berkeley, in 1662, that a judgment had been entered against him by the court of Lower Norfolk during his absence, and that, although his attorney was present, yet the latter was too ill informed about the merits of the side he represented to defend it properly; Bruce, therefore, prayed for a writ of error in order to enforce a rehearing before the same justices, and this was granted. In the meanwhile, the judgment of the county court was suspended.<sup>3</sup>

The most ordinary form of appeal was that looking to the trial in the General Court itself of a suit already passed upon by a bench of justices. Broadly speaking, it may be said that the appellate jurisdiction of this Court extended to all those cases which, in England,

<sup>1</sup> Lower Norfolk County Records, Orders Oct. 15, 1683. The General Court itself sometimes referred a difficult question to the Chief-Justice of England; see Robinson Transcripts, p. 261.

<sup>2</sup> General Court Orders, Robinson Transcripts, p. 30.

<sup>3</sup> Lower Norfolk County Records, vol. 1656-66, p. 393<sup>2</sup>. In the *Present State of Virginia, 1697-8*, it is stated that no writ of error was issued by the General Court, but this case seems to disprove it; see section vii. It is possible, however, that the sum involved was too small to give the right of appeal.

would have been entered, according to their particular character, on the respective dockets of the King's Bench, Common Pleas, Chancery, Exchequer, and Ecclesiastical courts, and until the establishment of a separate Admiralty court in Virginia, of the Admiralty. By an Act of Assembly, adopted in 1647, no appeal was to be allowed unless the sum or object in dispute was equal in value to sixteen hundred pounds of tobacco at least, or its equivalent at that time, ten pounds sterling; but as an appeal from the court of a county situated on the Eastern Shore was, owing to the remoteness of those parts, the cause of heavier expense, the limit there was considerably greater than these figures signified; no appeal was there permissible unless it involved a sum or object representing at least three thousand pounds of tobacco, or twenty pounds sterling, in value. All persons seeking a rehearing in the General Court were required to give good security that they would submit their cases to that tribunal.<sup>1</sup> In the winter of 1659-60, the restriction upon the right of appeal, when values below a certain amount were in dispute, seems to have been removed in every county except Northampton, where the original regulation was still retained; it was, however, now provided that, should the appellant be cast in such a suit before the judges of the General Court, he was, in addition to the costs of the appeal, to pay the appellee a sum, by way of damages alone, equal to one half of that which had been in controversy.<sup>2</sup> If the appellee had been the plaintiff in the

<sup>1</sup> Hening's *Statutes*, vol. i., p. 345. In 1657-8, no appeal was allowed for any sum or object less in amount or value than £16 or 1600 lbs. of tobacco; Hening's *Statutes*, vol. i., p. 477.

<sup>2</sup> Hening's *Statutes*, vol. i., p. 541. Now, as at a later date, as shown by the note to a subsequent paragraph, a bond was perhaps required to be given only when the values involved were below the

court below, his entire gain was thus increased one third.

The statute relating to this subject adopted in 1661-2 was, in some of its requirements, of a very unusual character. It seems that many persons, rather than assume the heavy expense of visiting Jamestown to prosecute an appeal, preferred to give up their claims, however just they might think them. In order to render it less costly for this class of suitors to press such claims, permission was, by this law, granted them to make their appeals, not to the General Court at Jamestown, but to the Governor and Councillors while going the circuit as itinerant judges. If dissatisfied with the decisions delivered by these judges, they still possessed the right to carry an appeal either to the General Assembly, if the Governor had joined in the judgment on the circuit, or to the General Court, should only members of the Council have participated. These particular Councillors, however, were not to take part in the deliberations when the appeal reached that court. This provision, allowing what may be called a preliminary appeal to circuit judges was, no doubt, looked upon as affording a satisfactory settlement of the question of expense which had previously prevented so many suitors from proceeding beyond the county court. If these suitors, after the decision in this preliminary appeal, remained discontented, then they could have no reasonable ground to complain on the score of the anticipated costs, should they be anxious to enter a second appeal in the General Court; they had already obtained the benefit of the superior experience, ability,

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figure which had previously permitted of the right of appeal. If the values were above that figure, it is probable that no bond was required.

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and knowledge of some of the members of that bench; and if they desired to obtain the benefit of a greater combination of these qualities as represented in the whole court, then they should be willing to pay the amount which this would entail. As we have seen, the system of circuits lasted only for a brief period; and if during its existence it furnished any special advantages, they were soon lost to litigants.<sup>1</sup>

The Act of 1661-2, following that of 1659-60, removed the restriction on the right of appeal when a small amount or an object of small value was involved, on the ground that there "might be as great error in judgment of matters of small value as of the greatest." The appellant in such a case, however, was still required to give security that he would prosecute the appeal; and also that, if cast in the suit in the General Court, he would, in the form of damages alone, pay the appellee fifty per cent. of the sum in dispute.<sup>2</sup> A few years afterwards, it was decided that an unconditional appeal should be allowed only in those cases which involved values exceeding sixteen hundred pounds of tobacco or ten pounds sterling.<sup>3</sup> In the counties situated on

<sup>1</sup> Hening's *Statutes*, vol. ii., p. 65. It was perhaps on account of the injustice inflicted by these general conditions on so many suitors of small means that a law was passed in 1662 allowing a writ of *Dedimus Potestatem* to issue to the counties to authorize the taking of witnesses' depositions for use in the General Court instead of bringing these witnesses there in person; see Revised Laws of 1662, Colonial Entry Book, vol. lxxxix.

<sup>2</sup> Hening's *Statutes*, vol. ii., p. 65. It would appear from the terms of this Statute that, when the suit involved an amount or values exceeding £16 or 1600 lbs. of tobacco, an appeal could still be made without giving bond for damages. See last paragraph of statute, which is rather obscurely expressed.

<sup>3</sup> Letter of Thomas Ludwell to Arlington, 1666, Winder Papers, vol. i., p. 205. It is probable, however, that the right of appeal

the Eastern Shore, three thousand pounds of tobacco or thirty pounds sterling were prescribed as the respective limit,<sup>1</sup> but, in 1677, this provision, relating to these counties alone, was repealed.<sup>2</sup> Four years later, a regulation (which seems to have been of general application) was adopted to the effect that no appeal should be permitted unless the subject of the suit represented values equal to, or in excess of, sixteen hundred pounds of tobacco or sixteen pounds sterling.<sup>3</sup>

In those cases in which only general rights involving no pecuniary values were under consideration, there does not appear to have been any restriction whatever on the right of appeal. Suits for the settlement of such rights varied widely in character, and were practically numberless. The most important perhaps were those relating to encroachments on personal reputation or personal liberty. An appeal always lay in a case of slander and defamation; but under no circumstances was it more frequently employed as a remedy for the supposed error of a lower court than when a servant had been detained beyond his appointed time; in a case

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in cases involving less than £10 or 1600 lbs. of tobacco was still allowed when bond was given by appellant with penalty of fifty per cent. damages in case of his failure in the General Court.

<sup>1</sup> Accomac County Records, vol. 1666-70, p. 31.

<sup>2</sup> Hening's *Statutes*, vol. ii., p. 397.

<sup>3</sup> See Culpeper's Report 1681, a synopsis of which will be found in Campbell's *History of Virginia*, p. 352. The authors of the *Present State of Virginia*, 1697-8, state that, at the end of the century, "any cause may begin in the General Court that exceeds £16 or 1600 lbs. of tobacco in value, and by appeal any cause may be brought thither"; see section vii.; see also Beverley's *History of Virginia*, p. 208. This apparently unrestricted right of appeal may, however, in suits involving less than £16 or 1600 lbs. of tobacco have been subject to the requirement that a bond should be given to the appellant to pay fifty per cent. damages in case of his failure to win in the General Court.

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of this kind the General Court was quick to use all its power to afford the protection sought. In the civil as in the criminal causes tried in this tribunal, the facts were ascertained by the verdict of a jury.<sup>1</sup>

The principal officers of the General Court were its clerk and the Attorney-General. The duties of the former did not differ substantially from those of the clerk of the county court as described in a previous section. The Attorney-General was the chief legal adviser of the Governor and Council, as well as the highest public prosecutor for the Crown to be found in the Colony. An illustration of the general character of his functions in the latter particular has already been presented in the account given of the pirates' trial, in 1700, before a court of Oyer and Terminer at Elizabeth City. His regular salary does not appear to have been large; in 1687, it was fixed at twenty pounds sterling annually; but this part of his official income was, no doubt, small as compared with the volume of the fees which he was empowered to charge. About four years later, his salary for one year was advanced to forty pounds sterling, and, in 1697, to one hundred pounds; but these additions, it seems, were only temporary, and were made because the number of criminal cases in which the Crown or the Government of the Colony were interested, requiring his professional attention in the course of these two years, had been unusually great.<sup>2</sup>

The persons who performed the duties of Attorney-General during the Seventeenth century were men of

<sup>1</sup> See case of Mrs. Sarah Bland against Col. St. Leger Codd in 1684, Colonial Entry Book, 1682-95, p. 138.

<sup>2</sup> Minutes of Council, June 15, 1696, April 26, 1698, B. T. Va.; also B. T. Va., 1691, No. 27; Colonial Entry Book, 1680-95 p. 241.

high distinction in the community independently of the honor and influence derived from that position. The first incumbent known to have occupied this important office was Richard Lee. Peter Jennings, who was nominated to it by Charles the Second, followed in 1670<sup>1</sup>; but Colonel George Jordan seems also to have filled the place sometime during this year; and he was still holding it in 1677.<sup>2</sup> Jordan was succeeded by William Sherwood, the most prominent lawyer practising in the Colony; but his tenure, no doubt at his own desire, was short, for, in 1679, he gave way to Edward Hill, who had received his commission from Chichely, the Deputy-Governor.<sup>3</sup> In 1685, Edmund, a kinsman of Peter Jennings, the former Attorney-General, became the incumbent of the office<sup>4</sup>; two years afterwards, the place seems to have been occupied by George Brent<sup>5</sup>; but again, in the course of 1687, Edmund Jennings resumed its duties, and was performing them at the end of the century, at which time he took the leading part in prosecuting the pirates tried at Elizabeth City.<sup>6</sup> In the interval, however, the office of Attorney-General had been filled by Edward Chilton, who, as we have seen, enjoyed a

<sup>1</sup> Robinson Transcripts, p. 258. His commission bore the date of September, 1670.

<sup>2</sup> General Court Orders, Oct. 10, 1670, Robinson Transcripts, p. 261; Colonial Entry Book, 1676-77, p. 340.

<sup>3</sup> Robinson Transcripts, pp. 206, 264, 266, 307; *Va. Maga. of Hist. and Biog.* vol. ix., p. 307.

<sup>4</sup> Henrico County Records, vol. 1677-92, orig. p. 326. His deputy in Henrico county, in the course of that year, was Launcelot Bathurst; see Minute Book 1682-1701, p. 113, Va. St. Libr.

<sup>5</sup> Colonial Entry Book, 1682-95, pp. 448, 531. Brent was possibly the Deputy Attorney-General.

<sup>6</sup> Edmund Jennings became a member of the Council in 1691; Orders of Council, April 21, 1691, Colonial Entry Book, 1680-95.

lucrative practice in all the counties lying nearest to Jamestown.<sup>1</sup> Chilton occupied it until 1694, when he made a voyage to England, and was then succeeded by William Randolph, who was holding the position in 1697, in which year he represented the interests of the Crown in several indictments for violations of the Navigation Acts.<sup>2</sup> In 1698. Randolph resigned, and Bartholomew Fowler, who for some time had served as the "King's counsell-at-law," was appointed in his stead.<sup>3</sup> Fowler remained in office only a brief term, for, in 1699, Benjamin Harrison was nominated to perform the duties of Attorney-General.<sup>4</sup> The Crown was also represented at this time by a Solicitor-General, a position filled in 1698 by John Povey, who received an annual salary of one hundred pounds sterling.<sup>5</sup>

<sup>1</sup> Orders of Council, Oct. 20, 1691, Colonial Entry Book, 1680-95.

<sup>2</sup> *Ibid.*, April 14, 1694, Colonial Entry Book, 1680-95; see also B. T. Va., 1697, vol. vii., p. 103.

<sup>3</sup> Letter of Gov. Andros, Oct. 13, 1698, Colonial Entry Book, vol. xxxvii., p. 313; see also Minutes of Council, April 19, 1698, B. T. Va., vol. liii.

<sup>4</sup> See an opinion by Harrison as Attorney-General in Middlesex County Records, vol. 1694-1703, p. 300.

<sup>5</sup> Minutes of Council, June 15, 1696, April 26, 1698, B. T. Va., vol. liii.



## CHAPTER XXI

### Remaining Courts: General Assembly

**A**N Act passed as early as 1642-3 declared that an appeal should lie from the Quarter or General Court to the General Assembly, provided that the appellant gave security that he would press his suit,—a matter for very careful consideration, as he would be compelled, should he lose his cause before the latter body, to pay treble damages.<sup>1</sup> A case, it seems, might come up to the General Assembly from a bench of justices without passing first through the General Court; but it was expressly laid down in 1647 that this could only occur when the cause was “of a nature that no known law or precedent hath over-ruled the same.” It was later declared that any suit should have straight admittance to the General Assembly, should good proof be offered that the object of the county court in trying it had been to defeat and not to promote equity.<sup>2</sup> These regulations show the extraordinary care with which the members of the legislature sought to protect the rights of citizens; and also their determination to reserve to themselves, under certain circumstances, an

<sup>1</sup> Hening's *Statutes*, vol. i., p. 272.

<sup>2</sup> Hening's *Statutes*, vol. i., p. 345. I have already pointed out elsewhere that, in a case in which the Governor had sat as a judge on circuit, the appeal lay directly to the General Assembly; Hening's *Statutes*, vol. ii., p. 66.

absolute control over the judicial administration. They virtually proclaimed that, if a legal precedent had to be established, the law-making body should establish it; and that if open and unscrupulous injustice had been done, the highest representative body in the Colony should have the chief part in correcting it.

The course which a suit appealed from the General Court to the General Assembly followed was governed by fixed regulations:—it was first considered by the House Committee on Private Causes, whose deliberations were assisted by a small committee of the Councilors in their capacity as members of the Upper House; but as they had already sat in the case as judges of the General Court, it is not likely that their influence was strongly exerted to reverse the decision reached in that court. This joint committee, having heard all the arguments, and arrived at a common conclusion, reported it to the House of Burgesses, which body then reheard the case; and it was finally determined by the consensus of the General Assembly.<sup>1</sup> In the course of 1654, the committee gave judgment in Edward Sanderson's favor against the estate of Cornelius Lloyd on a bond for five hundred pounds sterling<sup>2</sup>; and two years afterwards, it settled a like controversy which had arisen between Colonel Swann and Robert Ellison.<sup>3</sup> These cases are fairly typical of a very large proportion of those passed upon by this committee. At the session held in 1658-9, it was enacted that no appeal involving a sum of money, or object of value, should lie to the General Assembly from the General Court unless it represented an amount ex-

<sup>1</sup> Colonial Entry Book, 1682-95, p. 124.

<sup>2</sup> Randolph MS., vol. iii., p. 257.

<sup>3</sup> *Ibid.*, p. 273.

ceeding twenty-five hundred pounds of tobacco, independently of all costs and damages.<sup>1</sup> In the following year, this was thought to be an unwise provision, and it was, therefore, declared that there should be no restriction whatever upon the right of appeal; but in order to guard against that right being asserted on purely frivolous grounds, the appellant was required to give a bond that, should the decision go against him, he would pay the appellee in damages alone a sum equal to one half of the whole amount in controversy, besides the costs of the suit.<sup>2</sup>

There was seemingly no restriction on the ability to appeal to the General Assembly touching any matter involving a general right, however insignificant on its face. A single instance in illustration of this may be given: in 1675, Colonel Kendall, of Northampton, who had been serving as the executor of Christopher Dixon's estate, having first apparently carried the case into the General Court, submitted to the General Assembly the question whether one of Dixon's sons possessed, under the terms of his father's will, the "moietie in a mare" and her increase, a part of the personal property. This, as will be seen, was a point involving exclusively the legal interpretation of the testament. The General Assembly ordered that all the circumstances of the case should be resubmitted to the county court for a perfectly accurate statement of them; and that this

<sup>1</sup> Hening's *Statutes*, vol. i., p. 519.

<sup>2</sup>*Ibid.*, vol. ii., p. 541. It was expressly declared, however, that "this Act should not extend to the Act prohibiting appeals from Northampton County under a certain value, which is yet in force." It is quite probable also, as already stated, that the bond for damages was required only in those cases in which an amount or object of small value was involved.

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statement should be reported to the next General Assembly for determination.<sup>1</sup>

Not only did the right of appeal to the General Assembly lie in all criminal cases entered in the General Court, but that body occasionally assumed to itself the power to inquire into these cases even before they had been called in this court. This, however, was only done when the session of the General Assembly came, in point of time, before the term of the General Court at which such a case would ordinarily have been considered. The object of the regulation was, no doubt, simply, by hastening the trial, to diminish the outlay for the prisoner's support, and also to reduce the chances of his escape.<sup>2</sup>

During Culpeper's term, the right of appeal to the General Assembly was partially taken away by the action of the English Government. The Burgesses had boldly declared that, as a cause, when thus submitted, had already been decided by the judges of the General Court, it was not proper that any members of that court, in their political capacity as Councillors, should be joined with the House Committee on Private Claims in inquiring into the merits of the same case when it came before that committee on appeal for final settlement. Culpeper seems to have resented this assertion, and during his stay in England made such representations regarding it to the English authorities that it was determined by them that thereafter the only appeals from the General Court's judgments which should be allowed, should be appeals, not to the General Assembly,

<sup>1</sup> Northampton County Records, vol. 1674-79, p. 65. This case may have come up directly from the Northampton county court under the regulation already referred to in the text.

<sup>2</sup> Acts of Assembly, 1655-6, Randolph MS., vol. iii., p. 262.

but to the King in Council.<sup>1</sup> This would convert the General Court practically into a court of last resort, for the overwhelming number of suitors cast in that court would be too much discouraged by the distance and the expense to carry their causes to the Privy Council. The English authorities, no doubt, anticipated this in adopting such a regulation. Their chief reason for changing the old rule was that they were afraid lest the Burgesses should in time acquire an absolute control over the Colony's judicial administration in spite of the protests of the Councillors, jealous of their privileges as members both of the Upper House and of the General Court. Should the Burgesses, by their separate action, obtain the right to reverse any decision of that court, they would possess the means of reducing the most powerful body of men in the Colony, namely, the Governor and Councillors, practically to a position subordinate to their own. Overtopping them judicially was a long step towards overtopping them politically, which, in the minds of the Burgesses, always so persistent in stickling for their independence, was a very desirable condition. The English authorities felt that, in making the General Court a court practically of last resort, they were increasing its members' importance both judicially and politically, and in proportion diminishing the importance of the Burgesses, already

<sup>1</sup> Culpeper's Report, British Colonial Papers, vol. xlvii., No. 105; *Present State of Virginia, 1697-8*, Section on Law. The change was really brought about by a committee of the Privy Council known as the Lords of Appeal; Beverley's *History of Virginia*, p. 207. Heavy security had to be given that the appeal would be carried to England, and this alone was, in most cases, an insuperable obstacle to its prosecution. A letter of William Fitzhugh, dated March 19, 1682-3, throws light on the difficulties encountered in obtaining such security. See also Colonial Entry Book, 1681-5, p. 326.

deemed to be too bold and arrogant in their determination to extend their power.

The Assembly very naturally raised a loud protest when their right to hear appeals was taken away. They declared that this right had belonged to their House almost from the Colony's foundation, and that it was an inherent one guaranteed to them by the customs and constitutions of Virginia. Should the King be opposed to continuing it in its original scope, then they petitioned that the General Assembly should be permitted to hear all appeals touching an amount not exceeding three hundred pounds sterling. With great earnestness, they urged the Governor to unite in their prayer for the complete restoration to them of the right in all cases irrespective of the values represented; but while declining to go with them as far as this, he consented to join in the alternative request, provided that the sum was limited, not to three hundred pounds sterling, as proposed, but to two hundred. It was finally decided by the English Government that the General Assembly should retain the right to hear all appeals involving a sum not in excess of three hundred pounds sterling.<sup>1</sup>

The Burgesses never fully reconciled themselves to the change. In the instructions given in 1691 to Jeffrey Jeffreys, their agent in England, they directed him to use every means in his power to influence the English authorities to restore in full the "ancient method of making appeals" from the General Court to the General Assembly; this, they declared, was the only way by which the errors and grievances left un-

<sup>1</sup> Minutes of the Assembly, April 16, 26, 1684, Colonial Entry Book, 1682-95, pp. 124, 180; *Ibid.*, 1685-90, p. 47; B. T. Va., 1699, vol. vii., p. 61; see also British Colonial Papers, vol. lli., No. 103.

redressed by that court could be remedied, as, owing to the distance to England, and the expense of pressing a cause there, after transporting thither the necessary papers and records, suitors found it practically impossible to go on with their cases, however keen their sense of wrong and injustice.<sup>1</sup> That the Burgesses had a stronger reason than mere regret for a lost privilege in seeking the restoration of the full right of appeal to the General Assembly is shown by the support which Jeffreys received from Henry Hartwell, when he laid the petition before the Committee of Plantations; that distinguished lawyer, who was at this time in England, pressed upon the Committee the advisability of appointing to the General Court in Virginia only men who had been regularly trained to the profession of law; and on the same occasion, he no doubt, repeated in substance what he himself had quite probably written in the pamphlet, *Present State of Virginia*, 1697-8, (of which he was one of the three joint authors) namely, that ever since the General Court had become practically the court of last resort in the Colony, the community had "groaned under its arbitrary proceedings," and that the "liberties, lives, and estates" of all the citizens were at the mercy of one man.<sup>2</sup> While there was certainly much exaggeration in so extreme an expression, nevertheless there is no reason to question the superiority of the former system, under which the General Assembly could correct any errors or injustices committed by the General Court, whether unintentionally or designedly.

<sup>1</sup> Minutes of Assembly, May 22, 1691, B. T. Va., No. 23.

<sup>2</sup> B. T. Va., 1697, vol. vi., p. 148; *Present State of Virginia*, 1697-8. All the parts in this pamphlet relating to law were quite probably written by Hartwell, or at least had his approval.

## CHAPTER XXII

### Remaining Courts : Admiralty and Chancery

**D**URING the greater part of the Seventeenth century, all cases involving questions of admiralty were tried, not by a single court, which possessed the exclusive right of inquiry in that field, but by both the county court and the General Court. It would appear that the latter, in conformity with the character of its most important original jurisdiction, decided all admiralty causes in which the punishment to be inflicted consisted of the loss of life or limb. Such causes were principally those in which persons were brought up before it for having committed murder or a like offense on the high seas; for instance, in 1654, Captain Barrett was summoned to Jamestown to answer for having, during a voyage from England, put Catherine Grady to death on the ground that she was a witch.<sup>1</sup> A few years afterwards, an Act of Assembly provided that the county courts should have jurisdiction in all maritime causes. This was probably intended to apply only to civil and small criminal cases. The sheriff of each county was, by the same Act, empowered to serve a warrant on shipboard; but such a document must have been signed either by the Governor or a single Councillor, or by two members of the county

<sup>1</sup> *Va. Maga. of Hist. and Biog.*, vol. viii., p. 162.



court, one of whom must belong to the quorum.<sup>1</sup> This law does not seem to have met all the inconveniences growing out of the previous situation; and, two years after its adoption, as a means of removing these inconveniences, since they touched alike the native inhabitants and the merchants trading in the Colony, the General Assembly authorized the General Court to enforce justice in all matters relating to merchant and mariner and master and seaman, whether consisting of offenses, complaints, contracts, pleas, exchanges, debts, charter parties, hires or freights.<sup>2</sup>

By the end of twenty years, maritime causes, if they had ever been entirely withdrawn from the jurisdiction of the county court, had been restored to it, for, in the course of 1677-8, the court of Northumberland sat at Mr. Thomas Mathew's residence as "court maritime," and as such convicted Robert Finny, the master of the ship *Constant Mathew*, of London, of having violated the Navigation Acts.<sup>3</sup> Certain classes even of civil cases, however, continued as before to be tried in the General Court; when, in 1679-80, an attempt was made to enter a suit in the county court of York for the recovery of damages sustained in a voyage, during which the vessel had been attacked by the Turks, the justices refused to hear it on the ground that such causes were customarily determined at Jamestown.<sup>4</sup> That breaches of the Navigation Laws were no more embraced by the York county court than by the Northumberland among

<sup>1</sup> Henning's *Statutes*, vol. i., p. 467.

<sup>2</sup> *Ibid.*, p. 538.

<sup>3</sup> *Va. Maga. of Hist. and Biog.*, vol. i., p. 202.

<sup>4</sup> York County Records, vol. 1675-84, orig. p. 214. In this case, the damage had been inflicted on the remote high seas, and not in the waters of the county, or at least not in the general vicinity of its shores.

the offenses necessarily going up to the General Court for trial, was shown by its action in 1685 in prosecuting, on the information of the Attorney-General, the master of a ship who had disregarded the provisions of those laws.<sup>1</sup> A second case in which the same laws had been disregarded was entered in York county in 1690.<sup>2</sup>

Berkeley, replying, in 1671, to certain inquiries of the English Government, had declared that there was no real need at that time of a separate admiralty court, since not a single prize had, in the course of twenty-eight years, been brought into the waters of the Colony.<sup>3</sup> Condemning prizes, however, was not the only duty such a court might be justly expected to perform. There were three reasons which probably prevented the creation of this court before it was really established: first, the influence of the Governor, Councillors, and county justices was, perhaps for many years, opposed to it because it would have deprived them of one of the most important divisions of the jurisdiction of their respective courts; secondly, the salaries of the officers of a new court would have increased the burden of public taxation, already very onerous; thirdly, the supposition was that it would be very inconvenient to refer all admiralty causes to a single court having

<sup>1</sup> York County Records, vol. 1684-87, p. 148, Va. St. Libr. The violation of the Act had in this case, no doubt, taken place in the waters of the county.

<sup>2</sup> York County Records, vol. 1687-91, p. 527, Va. St. Libr. In 1692, however, the General Court condemned a ship for violating the Navigation Laws. The facts had been ascertained in that court; B. T. Va., 1692, No. 100. It is possible that there had been an appeal from a county court. As already pointed out, however, the General Court had a concurrent original jurisdiction with the county courts in all cases involving sums or objects exceeding a certain figure in amount or value.

<sup>3</sup> Henning's *Statutes*, vol. ii., p. 512.

witnesses and delivering judgment in one place only, instead of to whatever county court happened to be nearest the scene where the facts of the case arose.

As the Colony's trade extended, and the authorities' determination to enforce the Navigation Acts grew stronger and firmer, the establishment of an admiralty court entirely distinct in itself became inevitable. As early as 1685, Howard received instructions from England to erect such a court, a step which he had probably recommended previously as the most appropriate means of deciding all maritime causes.<sup>1</sup> Nothing, however, seems to have come immediately of this injunction. Five years afterwards, the Governor and Council, perhaps overburdened with the ever increasing business of their court, arrived at the conclusion that a court of admiralty had now grown to be an "absolute necessity"; and in order to reduce the expense of supporting it, (always, as we have already pointed out, a stumbling block in the way of its creation) they suggested that the proposed court and a court of exchequer should be formed, under the presidency of a single judge; and that the two should also possess a register and marshal in common. In their petition to the Committee of Plantations, they requested that rules and methods for shaping the proceedings in these courts, never hitherto known in Virginia, should be formulated by the English authorities.<sup>2</sup> Before the Court of Admiralty was established, Edward Randolph, as the agent of the English Government, visited the Colony to find out whether there was any laxness in enforcing the Navigation Laws. He soon discovered that the county court justices did not show any special zeal in perform-

<sup>1</sup> Colonial Entry Book, 1685-90, p. 32.

<sup>2</sup> Minutes of Council, May 15, 1691, B. T. Va., No. 27.

ing this duty.<sup>1</sup> He seems to have agreed substantially with Nicholson, who, in writing to the Committee of Plantations eight years later, predicted that admiralty courts, in which all violations of the Navigation Acts would be tried, would serve to make the American Colonies more dependent on "Old England both in the point of government and trade."<sup>2</sup>

During the year of Randolph's stay in Virginia, Andros was, by his instructions, empowered to establish an admiralty court for the trial of maritime cases; and more than one should there be a need for it.<sup>3</sup> Nevertheless, as late as 1697, there was no such tribunal in existence in Virginia. In the course of that year, Captain Douglas, of the guardship patrolling the waters off the coast, brought in a French prize captured as it was bound for Newfoundland with a load of salt for the fisheries. Andros, reporting this seizure to the Committee of Plantations, declared that, "as there was no court of admiralty settled," he had named a temporary court to inquire into all the circumstances of the case, and that this court had condemned the vessel, but that, as there was no prize officer, it had to be turned over

<sup>1</sup> B. T. Va., 1692, No. 110.

<sup>2</sup> See Nicholson's Letter June 10, 1700, B. T. Va., vol. viii.: "I am humbly of the opinion that it will be prejudicial to his Majesty's interest in all respects if such courts (admiralty) be not established in ye whole English continent here for ye inhabitants; may be ye governments may in some years pretend custom; and that when they are grown more powerful, it may be very difficult to get their ways, methods, and customs altered; such governments will make them depend more on Old England both in point of government and trade." It was in this letter that Nicholson also suggested that the King should be represented in America by a viceroy, the proposition of a statesman. Randolph, as pointed out later, favored the establishment of a court of exchequer, but its influence would have been the same as that predicted for courts of admiralty by Nicholson.

<sup>3</sup> B. T. Va., Colonial Entry Book, vol. xxxvi., p. 113.

to William Byrd, the Auditor-General, to be disposed of as directed by Act of Parliament.<sup>1</sup> It would appear that this special court consisted of a judge commissioned for the trial of this single case; and that he was aided by a register and marshal similarly appointed. These officers were respectively Edward Hill, Robert Beverley, and Edward Ross. In making these nominations, the Governor was acting with the advice and approval of the Council.<sup>2</sup>

It was not until March 1697-8 that a court of admiralty was established in the Colony as a permanent part of its judicial system. It was officially designated as the Court of Vice-Admiralty. The authority for its creation was contained in a commission bearing the signature of Governor Andros, who had received a command from the High Court of Admiralty in England, dated June 26, 1697, to erect it.<sup>3</sup> The bounds within which the new court possessed jurisdiction embraced, in addition to Virginia, the Carolinas, and at first also the Bahama Islands; but the Governor of Virginia alone enjoyed the right to nominate the court's officers, whose names he was required to transmit to the Lord High Admiral of England for his approval and formal allowance. The first persons appointed to fill the positions of judge, register, marshal, and advocate were respectively Edward Hill, Miles Cary, Michael Sherman, and John Taylor,<sup>4</sup> all men of high standing in the

<sup>1</sup> Letter of Andros, B. T. Va., 1697, vol. vi., p. 160.

<sup>2</sup> Minutes of Council, June 11, 1697, B. T. Va., vol. liii.

<sup>3</sup> *William and Mary College Quart.*, vol. v., p. 129; Minutes of Council, March 10, 1697-8, B. T. Va. vol. liii.

<sup>4</sup> B. T. Va., 1699, vol. vii., pp. 65, 67. Andros had originally intended to appoint Edward Chilton to the place of advocate and he was even named; see B. T. Va., Entry Book, vol. xxxvii., p. 206. The commission of these men stated that the court was designed for Virginia and North Carolina alone.

Colony. This court of admiralty was a prerogative court.<sup>1</sup> In the beginning, the judge received, by way of remuneration, five per cent. of the amount decreed in every private cause; the register, two and one half; and the marshal, the same proportion.<sup>2</sup> In 1699, Governor Nicholson recommended to the Committee of Plantations that the judge should be paid fifty pounds sterling; the advocate, twenty-five pounds; and the marshal, twenty. These sums were to be drawn from the income derived from the quitrents and the tax of two shillings imposed on every exported hogshead of tobacco.<sup>3</sup> Nicholson had been induced to make this recommendation by the complaint of these officers that the fees and profits of their respective positions failed to compensate them for the expense and trouble of holding or attending the sessions of the court.<sup>4</sup>

The Attorney-General seems to have occasionally acted as the advocate's substitute in the Court of Admiralty. In 1699, that officer received a fee of five pounds sterling for the leading part which he had taken in prosecuting in this court the master of a ship tried for violating the Navigation Laws.<sup>5</sup> One of the most important duties of the marshal was to assume charge of such a ship immediately after its condemnation and to render an account of all that it contained, such as her cargo, guns, ammunition, tackle, furniture, and apparel, to the Auditor-General of the Colony.<sup>6</sup> The

<sup>1</sup> B. T. Va., 1699, vol. vii., p. 67.

<sup>2</sup> Minutes of Council, Feb. 24, 1698, B. T. Va., vol. liii.

<sup>3</sup> Letter of Nicholson dated July, 1699, B. T. Va., vol. vii.

<sup>4</sup> B. T. Va., vol. vii., p. 71.

<sup>5</sup> Minutes of Council, June 22, 1699, B. T. Va., vol. liii. The Attorney-General probably appeared in most of the admiralty cases tried by commission of Oyer and Terminer.

<sup>6</sup> Minutes of Council, Aug. 8, 1700, B. T. Va., vol. liii.

court sat in different places in order to diminish the expense of summoning witnesses; now, as we have seen, it held a session at Elizabeth City for the purpose of trying the pirates captured in Lynnhaven Bay; now it held a session at Middlesex courthouse for the purpose of instituting condemnation proceedings against a ship which had disregarded the provisions of the Navigation Acts.<sup>1</sup> The master of this vessel entered an appeal to the High Court of Admiralty in England, but as he failed to pay the amount assessed in the condemnation of the ship, namely, two hundred and four pounds sterling and nineteen shillings,—the ordinary condition of appeal,—the condemnation was made absolute.<sup>2</sup>

The jurisdiction of the Admiralty Court embraced not only all cases of piracy, privateering, and violations of the Navigation Acts, but also all cases of unlawful conduct on the collectors' part in performing their duties; or of unlawful conduct which these collectors had detected on the part of other persons in relation to the taxes on exports. This court also determined all controversies arising between master and mariner, whatever might be the subject of the dispute. In 1699, the General Assembly passed an Act declaring that all piracies, robberies, murders, and other capital offences committed upon the high seas, or in any river, creek, bay or harbor in which the Admiral had jurisdiction, should be tried in Virginia just as if they had been committed within the bounds of the landed area of the Colony. The Governor for the time being was

<sup>1</sup> B. T. Va., vol. viii., Doct. 40.

<sup>2</sup> *Ibid.*, Captain Aaron Whetson, of Brîdeford, whose ship was condemned, entered an appeal. His vessel having been appraised, he was allowed to come into court and purchase her for the amount of the appraisement; see *Minutes of Council*, May 5, 1699, B. T. Va., vol. liii.

impowered to issue a commission of Oyer and Terminer to the judge of the Admiralty Court, and such other citizens as were thought qualified to serve with him in a trial of this nature; and the offender, brought to the bar, was to be liable to the same judgment as was authorized to be passed upon all like offenders found guilty in England.<sup>1</sup> It was under this Act that the three pirates were, in 1700, tried and condemned by a court of Oyer and Terminer which sat at Elizabeth City, under the presidency of Edward Hill, the Admiralty judge.<sup>2</sup>

The only other court of the first order established in Virginia during the Seventeenth century was the Court of Chancery erected by Howard in accord with instructions received from the English Government, acting, no doubt, on his own interested recommendation. It was only in existence during his administration, and, therefore, played but a small part in the judicial history of the whole period. It lasted long enough, however, to throw additional light, if such were needed, upon the grasping character of this Governor. Howard sat as High Chancellor, with no one practically to share the position's responsibility, for the Councillors, while they had the right to advise him in formulating the court's decrees, had no real voice in shaping its decisions; he was left to settle all chancery cases by his single will; and what he looked upon as more important, perhaps,—to appropriate all the fees. He declined to hold the sessions in the State-House, but insisted upon sitting in the dining-room of a large private residence, in order, as Beverley imagined, "that his court might have the air of a new court."<sup>3</sup> As soon as he vacated the office of

<sup>1</sup> Hening's *Statutes*, vol. iii., p. 176.

<sup>2</sup> B. T. Va., vol. viii., Doct. 13.

<sup>3</sup> Beverley's *History of Virginia*, p. 78.



Governor, this tribunal was very properly abolished and its jurisdiction restored to the General Court, from which it had been taken simply for his own pecuniary aggrandizement.

At different times, it was suggested that a separate court of exchequer should be established in the Colony. The duties of such a tribunal were embraced in the jurisdiction of the General Court. In 1691, the Governor and Council, who formed this latter body, in writing to the English Government pronounced a court of exchequer to be an urgent necessity. That this recommendation made an impression is shown by the fact that, during the following year, the English authorities instructed Governor Andros to call a special court of this nature whenever an important case involving the revenue arose; and they also ordered him to make a full report on the class of cases, and doubtless also on the probable number, that would come within the purview of such a court. This was to be done to enable the English Government to decide as to whether it would be advisable to establish a permanent exchequer court in Virginia.<sup>1</sup> Edward Randolph, who, as has already been mentioned, visited the Colony in 1692, urged its erection for the purpose of its trying all causes relating to the Crown, "as he did not think the civil courts then in existence were, under certain circumstances, as disposed to enforce the law as strictly as the interests of the King demanded."<sup>2</sup> In a report made by the Auditor-General in 1699, the proposition to establish a court of exchequer was discouraged on the ground that the expense which it would entail would be greater

<sup>1</sup> B. T. Va., Entry Book, vol. xxxvi., p 120; see also *Minutes of Council*, May 15, 1691; B. T. Va., 1691, No. 27.

<sup>2</sup> B. T. Va., 1692, No. 110.

than any advantage that could spring from it; and that if it was necessary for a second court to supplement the General Court's work in relation to revenue cases, then this could be easily done by the new Court of Admiralty.<sup>1</sup> This view finally prevailing, no separate court of exchequer was established in Virginia during the Seventeenth century.

<sup>1</sup> Minutes of Council, June 3, 1699, B. T. Va., vol. liii.

END OF VOLUME I









